

CLIFFORD BAIR C95079  
L3 346 P.O. BOX 20  
TRACY, CA 95378 0600

FILED

MAR - 5 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT

CLIFFORD BAIR

PRO SE PETITIONER

v.

CLAUDE FINN WARDEN

DVI TRACY, CA

BOARD OF PRISON

HEARINGS et al

RESPONDENTS

E-filing

PETITION FOR WRIT OF

HABEAS CORPUS

CV 08

CASE NO#

JSW

(PR)

SONOMA COUNTY SUPERIOR COURT

CASE NO# A 118294 Division One

1ST DISTRICT APPELLATE COURT

CASE NO# S 155879 BAIR ON H.C.

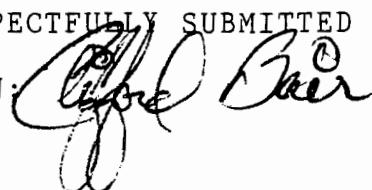
CALIFORNIA SUPREME COURT

PETITIONER CLIFFORD BAIR PRO SE DECLares UNDER PENALTY OF PERJURY  
THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST OF HIS  
KNOWLEDGE.

EXCUTED ON THIS DATE: 2/25/2008

RESPECTFULLY SUBMITTED

SIGN:



This petition concerns:

<input type="checkbox"/> A conviction	<input checked="" type="checkbox"/> Parole
<input type="checkbox"/> A sentence	<input type="checkbox"/> Credits
<input type="checkbox"/> Jail or prison conditions	<input type="checkbox"/> Prison discipline
<input type="checkbox"/> Other (specify): _____	

1. Your name: CLIFFORD BAIR
2. Where are you incarcerated? Deuel Vocational Institution Tracy California
3. Why are you in custody?  Criminal Conviction  Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

FIRST DEGREE MURDER  
FALSE IMPRISONMENT

- b. Penal or other code sections: \_\_\_\_\_
- c. Name and location of sentencing or committing court: Sonoma County Superior Court  
SANTA ROSA, CALIFORNIA
- d. Case number: SCR-12451-C
- e. Date convicted or committed: 9/30/84
- f. Date sentenced: 9/30/84
- g. Length of sentence: 27 YEARS TO LIFE

- h. When do you expect to be released? \_\_\_\_\_

- i. Were you represented by counsel in the trial court?  Yes.  No. If yes, state the attorney's name and address:

EDWARD KRUG

Sonoma County, California

4. What was the LAST plea you entered? (check one)

Not guilty  Guilty  Nolo Contendere  Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

Jury  Judge without a jury  Submitted on transcript  Awaiting trial

## 6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

1. PAROLE BOARD FAILED TO PROVE UNSUITABILITY WITH EVIDENCE.
2. VIOLATED 14TH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION.
3. CONTINUE RELIANCE ON UNCHARACTERISTICS FACTORS TO DENY PAROLE.
4. CONTINUES TO VIOLATE PEN CODE SEC 3041(a)(b).

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

MARCH 30TH 2007 WAS PETITIONERS 3RD PAROLE BOARD HEARING TO WHICH HE RECEIVED A 3 YEAR DENIAL. THERE HAS BEEN NO EVIDENCE PRODUCED AT ANY OF PETITIONERS PAROLE BOARD HEARINGS AT 2000 OR 2003 OR AT HIS 2007 PAROLE BOARD HEARING TO PROVE THAT PETITIONER IS A THREAT TO SOCIETY OR A RISK TO PUBLIC SAFETY. THE PAROLE BOARDS CONTINUED RELIANCE ON PETITIONERS COMMITMENT, OFFENSE AND ON UNCHARACTERISTICS FACTORS THAT PETITIONER CAN AND WILL NEVER BE ABLE TO CHANGE FROM PETITIONERS 27 YEARS TO HIS SENTENCE AT LIFE WITHOUT THE POSSIBILITY OF PAROLE. THE PAROLE BOARD FAILED TO EXAMINE PETITIONERS ENTIRE RECORD OF PSYCHE HISTORY - PAROLE PLANS - SUPPORT LETTERS - JOB OFFERS - ALL OF WHICH PROVES THAT CLEARLY PROVE THAT PETITIONER IS SUITABLE FOR PAROLE. SEE EXHIBITS A, B, C, D, E, F, G, H

b. Supporting cases, rules, or other authority (optional):

SEE TABLE OF CONTENTS  
FOR SUPPORTING CASES

Grounds For Relief Continued

5. 42 U.S.C. 3041(b) STATES THE PANEL SHALL SET A DATE... UNLESS CONSIDERATION OF PUBLIC SAFETY... THE U.S. SUPREME, 9TH CIR & U.S.D.C. HAVE ALL VOTED THE LIBERTY INTEREST BASED ON THIS PENAL CODE. (See DUE PROCESS HEARINGS IN MEMORANDUM OF POINTS & AUTHORITIES.) CALIFORNIA CODE OF REGULATIONS (CCR) BEGS AD - ADMINISTRATIVE LAW SECTION 2400 STATES THEY'LL IMPLEMENT 42 U.S.C. 3041 AND CCR 2404(A) DEFINES CONSIDERATION FOR PUBLIC SAFETY AS AN UNREASONABLE RISK OF DANGER TO SOCIETY IF RELEASED & THAT (CCR 2402(b)) THEY'LL CONSIDER ALL THE RELEVANT & RELATIVE INFORMATION PRESENTED TO MAKE THEIR DECISION. CCR 2000(b)(48) GIVES THE BOARDS REMARK AS GOOD CAUSE & FINDING SHALL BE BASED ON A PREDOMINANCE OF THE EVIDENCE FACTUAL BASIS & GOOD CAUSE FOR THEIR DECISION BEING MADE. THERE IS NOT A PREDOMINANCE OF EVIDENCE (CONSIDERING ALL THE EVIDENCE) THAT IT WOULD BE AN UNREASONABLE RISK OF DANGER TO SOCIETY IF PETITIONER WAS RELEASED FROM PRISON. THERE WAS NO CONSIDERATION FOR PUBLIC SAFETY SO THE BPP PANEL MUST SET A DATE, THEY DID NOT SO THEY HAVE VIOLATED PETITIONER'S U.S.C FEDERALLY PROTECTED INTEREST. THIS PANEL DID NOT FOLLOW THEIR OWN RULES, DUE PROCESS REQUIRES THEY DO TO CONDUCTING PUBLIC HEARINGS. THIS COURT MUST FIND THAT THIS PANEL DID NOT FOLLOW THEIR OWN RULES TO CONDUCTING THIS HEARING SO ANY DECISION MADE BY THIS BPP PANEL IS FALSE. THERE WAS NO EVIDENCE OF ANY THREAT TO THE PUBLIC PRODUCED BY THIS BPP PANEL, THIS COURT MUST ORDER THAT THERE IS SUFFICIENT EVIDENCE TO ORDER A FORMAL STIPULATED AGREEMENT AND ATTORNEY COUNSEL TO REPRESENT PETITIONER IN THIS MATTER AND ORDER AND EVIDENTIARY HEARING. ORDER A NEW HEARING WITHIN 30 DAYS AND ORDER THE BPP TO FOLLOW THEIR RULES IN GRADING THIS PETITIONER'S LEGAL RELEASE DATE.

7. Ground 2 or Ground (if applicable):

SEE GRANTS 1 TIFROSCIE 4 AND 5

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

a. Supporting facts:

SEE EXHIBITS A, B, C, D, E, F, G, H  
FOR PROOF OF PETITIONERS FINANCIAL SUITABILITY

The Fourteenth Amendment → A Sentence Must Be Based on Reliable Information; If It Is Not, It Violates the Due Process Clause of the Fourteenth Amendment.

(SEE GENERALLY United States v. Smith (8th Cir. 1991) 994 F.2d 618, 622, CERT. DENIED 503 U.S. 9521 (1992) [RECOGNIZING THAT THE DUE PROCESS CLAUSE ENFORCES FUNDAMENTAL FAIRNESS. A CONVICTION (DENIAL OF PAROLE) NOT SUPPORTED BY SUBSTANTIAL EVIDENCE VIOLATES THE FAIR TRIAL WITH AMENDMENT RIGHT TO DUE PROCESS OF LAW] (JACKSON v. CIRGWIN (1979) 443 U.S. 307, 319 (6) L.ED.2d 560, 573.]

b. Supporting ~~facts~~ rules, or other authority:

THE AEDPA IS AN EX POST FACTO ISSUE. A CHANGE IN THE LAW WHICH ALTERS THE RULES OF EVIDENCE, SO THAT LESS OR DIFFERENT EVIDENCE IS NEEDED FOR CONVICTION THAN BEFORE, OR WHICH CRIMINALIZES AN ACT WHICH WAS NOT AN OFFENSE BEFORE THE CHANGE OR INCREASES THE PUNISHMENT VIOLATES EX POST FACTO CLAUSE

8. Did you appeal from the conviction, sentence, or commitment?  Yes.  No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Sonoma County Superior Court

b. Result DENIED

c. Date of decision: 5/21/2004

d. Case number or citation of opinion, if known: SCOR 12451 C

e. Issues raised: (1) Same As Grounds 1 Through 4

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal?  Yes.  No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court?  Yes  No. If yes, give the following information:

a. Result DENIED b. Date of decision: 9/15/2004

c. Case number or citation of opinion, if known: S-126016

d. Issues raised: (1) Same As Grounds 1 Through 4

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

\_\_\_\_\_

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

b. Did you seek the highest level of administrative review available?  Yes.  No.  
Attach docu that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court?  Yes. If yes, continue with number 13.  No. If no, skip to number 15.

13. a. (1) Name of court: \_\_\_\_\_

(2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

b. (1) Name of court: \_\_\_\_\_

(2) Nature of proceeding: \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

\_\_\_\_\_

\_\_\_\_\_

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

\_\_\_\_\_

\_\_\_\_\_

16. Are you presently represented by counsel?  Yes.  No. If yes, state the attorney's name and address, if known:

Superior Court Writ ENDORSED FILED MAY 25, 2007  
ISSUE CONCERNING TIME CREDIT DUE TO LATE PAROLE BOARD HEARINGS

17. Do you have any petition, appeal, or other matter pending in any court?  Yes.  No. If yes, explain:

ISSUES I THROUGHT 4 ARE ON APPEAL IN THE 9TH CIRCUIT COURT OF APPEAL  
From my 2003 Parole Board Hearing Case No. 06-15718

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

\_\_\_\_\_

\_\_\_\_\_

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 6/19/07

  
 (SIGNATURE OF)  
 (DINER)

1 HON. RENÉ AUGUSTE CHOUTEAU  
 2 JUDGE OF THE SUPERIOR COURT  
 3 Hall of Justice, Room 223-J  
 4 600 Administration Drive  
 5 Santa Rosa, CA 95403  
 6 Telephone: (707) 521-6724

FILED

SEP 21 2007

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SONOMA  
 By   
 Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

9 In re the Matter of

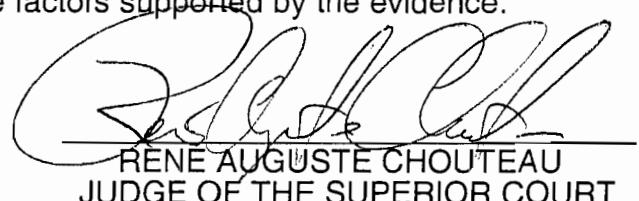
No. SCR-12451-C

10 CLIFFORD BAIR

CDC No. C-95079

11 for Writ of Habeas Corpus.

12 / ORDER DENYING PETITION FOR  
 13 The Court has read and considered Petitioner's Petition for Writ of Habeas  
 14 Corpus filed on July 16, 2007.  
 15 The Petition for Writ of Habeas Corpus is denied. The Parole Board considered  
 16 all relevant factors, and concluded that petitioner was unsuitable for parole. The Parole  
 17 Board's March 30, 2007, decision is supported by "some evidence," including the  
 18 callous and cruel nature of the offense, petitioner's prior criminal history, and his  
 19 unstable social history. The Parole Board's finding of lack of insight and need for family  
 20 therapy are not supported by the psychological evaluation in the record. However,  
 21 courts will uphold the denial of parole when it appears that the Board would have  
 22 reached the same conclusion based on the supported factors and those factors  
 23 individually or collectively justify that conclusion. *In re Luna* (2005) 126 Cal.App.4th  
 24 585, 598. In the present case, the record demonstrates that the Board would have  
 25 reached the same conclusion based on the factors supported by the evidence.  
 26 DATED:  
 27 SEP 21 2007  
 28

  
 RENE AUGUSTE CHOUTEAU  
 JUDGE OF THE SUPERIOR COURT

*COPY*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re CLIFFORD LEE BAIR,  
on Habeas Corpus.

A119294

(Sonoma County  
Super. Ct. No. SCR-12451-C)

By the Court:<sup>1</sup>

We take judicial notice of the opinion filed January 29, 1987 in People v. Clifford Lee Bair (A029732), a copy of which is attached to this order. (Evid. Code §§ 452, subd. (d) and 459, subd. (a).)

The petition for writ of habeas corpus is denied.

Dated: NOV 28 2007

MARCHIANO, P.J. P.J.

<sup>1</sup> Before Marchiano, P.J., Stein, J., and Swager, J.

*6B.*

Court of Appeal, First Appellate District, Div. 1 - No. A119294  
**S158879**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re CLIFFORD LEE BAIR on Habeas Corpus

---

The petition for review is denied.

**SUPREME COURT  
FILED**

**FEB 13 2008**

Frederick K. Ohlrich Clerk

---

Deputy

**GEORGE**

---

Chief Justice

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PENAL CODE 3041 (a) (b) CREATES A DUE PROCESS LIBERTY INTEREST IN A PRESUMPTIVE PAROLE RELEASE DATE, OF WHICH IS IGNORED BY THE PAROLE BOARD. THE BPH PRESENTED NO EVIDENCE TO PROVE THAT THIS PETITIONER IS A RISK TO PUBLIC SAFETY, OR THAT HE POSES A DANGER TO SOCIETY IF RELEASED ON PAROLE TODAY.

THE BPH'S CONTINUED RELIANCE ON THE OFFENSE AFTER ALMOST 24 YEARS OF INCARCERATION IS IN VIOLATION OF PETITIONERS CONSTITUTIONAL RIGHT TO A FAIR DUE PROCESS OF LAW.

THE BPH HAS (DEFACTO) SET PETITIONERS TERM AT LIFE WITHOUT PAROLE.

THE BPH MUST SET PETITIONERS TERM ACCORDING TO PENAL CODE 1168 and PENAL CODE 1170.

PETITIONERS EIGHT AND FOURTEENTH AMENDMENTS RIGHTS ARE BEING VIOLATED
17. MEMORANDUM OF POINTS AND AUTHORITIES.
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EXHIBITS A B C D E F G H.

EXHIBIT AA IS THE COMPLETE TRANSCRIPTS OF PETITIONERS MARCH 2007 PAROLE BOARD HEARING.

EXHIBITS BB, CC, THESE ARE THE PAROLE BOARDS DECISIONS RENDERED IN 2000 AND IN 2003.

EXHIBIT DD IS IN RE LAWERENCE 59 CAL.RPTR.3d 537 (CAL.APP.2 DIST. 2007) WHICH SHOWS THE STANDARD OF REVIEW USED BY THE STATE AND FEDERAL COURTS IN DETERMINING THE SOME EVIDENCE STANDARD TO BE USE TO DETERMINE LIFE PRISONERS RELEASE DATES.

## INTRODUCTION

Petitioner, Clifford Lee Bair, a California prisoner serving a sentence of 25 years to life for first degree murder, with a 2 year enhancement for false imprisonment is challenging the Board of Parole hearings denial of his parole date. Petitioner's 3rd parole consideration hearing was held on March 30, 2007, where petitioner received his 3rd three (3) year denial of a parole release date. The Board of Parole Hearings has denied petitioner a parole date based on his commitment offense for the third time and because the panel says he needs more therapy. Petitioner contends that the reasons used by the Board of Parole Hearings violates his Due Process rights under Penal Code 3041 (a)(b). This code creates a Due Process liberty interest, where petitioner's eighth and fourteenth amendment rights have been violated.

1. Petitioner's psychosocial assessments show that he does not need therapy, nor is he a threat to society. (Exhibit G).
2. Petitioner has parole plans and family support (Exhibit A).

The Board of Parole Hearings has failed to prove from petitioner's incarceration record of the past 23 plus years that he would pose an unreasonable risk of danger to the public as required by law.

PETITIONER SUBMITS TO THIS HONORABLE COURT HIS PRESENCE REPORT TO PROVE EXACTLY WHAT HE WAS CONVICTED OF. TO PROVE THAT HE WAS NOT CONVICTED OF HAVING A SHOT GUN. PETITIONER WAS NOT CONVICTED OF BREAKING AND ENTERING. PETITIONER HAS ADMITTED TO THE BENCH THAT HE DID HAVE A SHOT GUN AND THAT HE DID BREAK THE VEHICLE.

HEARING DATE:  
October 30, 1984  
8:30 AM  
Dept. V

FILING DATE:  
October 19, 1984

DA File No. 90130

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA ) PRESENTENCE REPORT

vs. ) Probation File 75481  
 ) CII No. 3 918 183

CLIFFORD LEE BAIR

Defendant ) By: Ronald S. Nessel  
              ) Deputy Probation Officer

OFFENSES: (First Amended Information) Count I: felony violation of Penal Code Section 187, murder in the first degree; Count II: felony 459 PC, burglary in the first degree; Count III: felony 236 PC, false imprisonment; Count IV: felony 236 PC, false imprisonment; Count V: felony 459 PC, burglary in the second degree; Count VI: felony 487(3) PC, grand theft; Count VII: felony 487(1) PC, grand theft; Count IX: felony 591 PC, destruction of telephone lines; Count X: felony 496 PC, receiving stolen property.

ORIGINAL CHARGE: Count I also charged 1203.075 PC and 1203.09 PC preclusions; Count II also charged 1203.09 preclusion; Count VII which charged 459 PC of a vessel was dismissed by the Court on 9-19-84.

DATES OF OFFENSES: Counts I through IX: 1-26-84; Count X: 1-25-84  
CONVICTION BY: Jury trial, verdicts rendered on 9-28-84.

CONVICTION BY JURY OR  
PLEA NEGOTIATIONS: None

CODEFENDANT: None

CUSTODIAL STATUS: Incarcerated

DAYS IN CUSTODY: See page two

ATTORNEY: Edward Krueg

AGE: 40

BIRTHDATE: 9-14-44

BIRTHPLACE: Kentfield, CA

ADDRESS: 825 East Cambridge Avenue, Visalia, CA

EDUCATION: 1 yr. college

MARITAL STATUS: Divorced

OCCUPATION: Laborer

EMPLOYED: No

Petitioner submits:

In re Lawrence, 59 Cal.Rptr 3rd 537 (Cal.App.2 Dist.2007)  
Prisoner incarcerated for 1st degree murder since 1983.

Petitioner submits this case for consideration to this honorable court to show the "some evidence" standard that is to be used by the BPH in parole suitability hearings. Petitioner submits that the Court in In re Lawrence, supra utilized the proper analysis in assessing Lawrence's crime to others of a more heinous, cruel, and egregious nature. Petitioner submits that his crime of felony murder does not rise to the level of Lawrence or any of the supporting cases cited in the Lawrence ruling.

These aforementioned cases were of a deliberate and intentional nature and not inadvertent as in petitioner's case.

Both the California state standard and the federal standard of "some evidence" are explained and defined in Lawrence.  
(See exhibit DD pages 561-567 for cases interpreting the state "some evidence" standard).

(See exhibit DD pages 567-569 for cases interpreting the federal "some evidence" standard.)

Petitioner's case presents a stronger case for a release date and release from prison than any of the cases listed in Lawrence and in the Lawrence case itself. Petitioner was convicted of 1st degree murder under the felony murder rule, where a human being died inadvertently of a heart attack rather than intentionally or deliberately.

CLIFFORD BAIR C95079  
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STATE OF CALIFORNIA  
COURT OF APPEAL FIRST APPELLATE DISTRICT

CLIFFORD BAIR  
PETITIONER PRO SE  
V.  
WARDEN D.V.I. TRACY, CA  
BOARD OF PRISON HEARINGS  
et al RESPONDENTS

CASE NO A 119294 DIVISION  
One  
PETITIONERS RESPONSE TO  
ATTORNEY GENERALS OPPOSITION

THE TEST IS NOT WHETHER "SOME EVIDENCE" OR A MODICUM OF EVIDENCE SUPPORTS THE REASONS FOR DENIAL, BUT WHETHER "SOME EVIDENCE" INDICATES THAT PETITIONERS RELEASE UNREASONABLY ENDANGERS PUBLIC SAFETY. (CCR TITLE 15 2402 (a), IN RE SCOTT (2005) 133 CAL. APP. 4TH 573 595 3d4 CAL. Rptr.3d 905.) [THE COMMITMENT CAN NEGATE PAROLE]SUITABILITY "ONLY" IF CIRCUMSTANCES OF THE CRIME... RATIONALLY INDICATE THAT THE OFFENDER "WILL" "PRESENTLY" PRESENT AN UNREASONABLE RISK TO PUBLIC SAFETY IF RELEASED. (IN RE LOWE 130 CAL. APP.4th 1405,31 Cal.Rptr.3d 1) "SOME EVIDENCE" OF THE EXISTENCE OF A PARTICULAR FACTOR DOES NOT NECESSARILY EQUATE TO "SOME EVIDENCE" THAT THE PETITIONERS RELEASE UNREASONABLY ENDANGERS PUBLIC SAFETY. THE APPELLATE COURT (SECOND DISTRICT), HAS SAID IN RE LAWRENCE" THAT UNLESS THERE IS AN UNREASONABLE RISK, THE PAROLE APPLICANT WILL RE OFFEND AND THUS POSE A RISK TO PUBLIC SAGETY, HE OR SHE IS TO BE RELEASED ON PAROLE. NEITHER THE BOARD OR THE GOVERNOR PROPERLY TAKES INTO ACCOUNT WHETHER RELEASE ON PAROLE WILL IMPAIR THE RETRIBUTIVE OR THE DETERRENT VALUE OF CONTINUED IMPRISONMENT AT THIS LATE STAGE OF THE INMATES INCARCERATION."(IN RE LAWRENCE B 190874 COURT OF APPEAL SECOND DISTRICT).

THE PETITIONER CONTENDS THAT THE COURT MUST REVIEW THE

RECORD TO DETERMINE IF THERE ARE OTHER FACTORS STILL CURRENTLY PRESENT IN DECIDING IF PETITIONER CURRENTLY POSES AN UNREASONABLE RISK TO PUBLIC SAFETY IF RELEASED. SIMPLY FROM THE PASSAGE OF TIME, PETITIONERS CRIME HAS LITTLE OR NO USEFULNESS IN DETERMINING FUTURE OFFENSES. (ESPECIALLY SINCE IT HAS BEEN ALMOST 24 YEARS SINCE HIS OFFENCE OCCURED), THAN IT WOULD HAVE IF IT HAD OCCURED 5 OR 10 YEARS AGO. (SCOTT SUPRA, PREDICTIVE VALUE OF AN OFFENSE IN DETERMINING FUTURE DANGEROUSNESS DIMINISHES WITH TIME) AND (ESPECIALLY WITH THE NUMEROUS ACCOMPLISHMENTS) (AS HAS BEEN SUBSMITTED INTO THE RECORD AS EXHIBITS), IN THE AREA OF REHABILITATION AS PETITIONER HAS ACCOMPLISHED. AS TO PETITIONER, THE "SOME EVIDENCE" TEST WHEN APPLIED HERE DOES NOT SATISFY THE STATUTES ULITMATE TEST, THAT THE RELEASE OF THE PETITIONER WOULD POSE AN UNREASONABLE RISK TO PUBLIC SAFETY.

IF THE CRIME COMMITTED IN THE WEN LEES CASE (B 188831 ), WHERE TWO VICTIMS WERE SHOT AND ONE WAS KILLED IN A RAGE, OR "ESPECIALLY" IN THE CASE OF ROSENKRANTZ WHERE THERE WAS STALKING LENGTHY PLANNING ECT ECT ETC, DOSE NOT RISE TO THE "SOME EVIDENCE STANDARD OF ENDANGERING PUBLIC SAFETY, THEN THERE IS NO REASONABLE WAY THAT "PETITIONERS" CRIME CANBE DEEMED TO DO SO.

PETITIONER CONTENDS THAT THE STANDARD BEING APPLIED TO HIS CASE IS AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED STATUTES UNDER PC 3041 AND CCR 2402(D). THIS VIOLATES FEDERAL LAW UNDER THE GUARANTEES OF DUE PROCESS OF THE 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AS HAS ALREADY BEEN DECIDED BY PRIOR COURT RULINGS.

THE 5TH AND 14TH AMENDMENTS PROHIBITS THE GOVERNMENT FROM DEPRIVING AN INMATE OF LIFE, LIBERTY AND PROPERTY, WITHOUT DUE PROCESS OF LAW. U.S.CONST.AMENDS V,XIV. IN THE PAROLE CONTEXT A VIOLATION OF AN INMATES DUE PROCESS OCCURES WHEN(1) DEPRIVED OF A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST IN PAROLE, (2) DENIED ADEQUATE PROCEDURAL PROTECTIONS IN THE PAROLE PROCESS. SEE e.g. BIGGS V. TERHUME, 334 F. 3d 910,913 (9th CIR.2003). GREENHOLTZ V. INMATES OF NEBRASKA PENAL AND CORRECTIONAL COMPLEX 442, U.S. 1,7,99 S. Ct 2100, 60 L.Ed. 2d.668 (1979). CONSTITUTION ALLY PROTECTED LIBERTY INTEREST, BOARD OF PARDONS V. ALLEN 482

U.S. 369, 377, 78, 107 S. Ct. 2415 96L. Ed. 2d. 303(1987).

CALIFORNIA PENAL CODE SECTION 3041 (a) STATES THAT THE PANEL OR BOARD SHALL NORMALLY SET A RELEASE DATE UNLESS IT DETERMINES THAT STATUTORILY DEFINED DETERMINATIONS ARE MET. THUS UNDER GREENHOLTZ AND ALLEN THE NINTH CIRCUIT FOUND THAT CALIFORNIA'S PAROLE SCHEME GIVES RISE TO A COGNIZABLE LIBERTY INTEREST IN A PAROLE RELEASE DATE.

THE INMATE MUST BE AFFORDED AN OPPORTUNITY TO BE HEARD BEFORE AN "UNBIASED" DECISION MAKER AND IN THE CASE OF A DENIAL OF PAROLE, MUST BE INFORMED OF THE REASONS UNDERLYING THE DECISION. (SEE JANCSEK V. ORGEN Bd OF PAROLE 833 F. 2d. 1389 (9th Cir. 1987)).

SECOND "SOME EVIDENCE" MUST SUPPORT THE DECISION TO GRANT OR DENIE PAROLE. Id (ADOPTING THE "SOME EVIDENCE" STANDARD ESTABLISHED BY THE SUPREME COURT IN SUPERINTENDENT V. HILL, 472 U.S. 445, 457, 105 S. Ct 2768, 86L. Ed. 2d. 356(1985). The EVIDENCE UNDERLYING THE GRANT OR DENIAL OF PAROLE MUST HAVE "SOME INDICIA OF RELIABILITY.

Id THE "SOME EVIDENCE" STANDARD APPLIES EQUALLY TO THE BOARDS DECISION AND THE GOVERNORS REVIEW. SEE e.g. IN RE ROSENKRANTZ 29 Cal. 4th 616, 656, 660, 661 128 Cal. Rptr. 2d 104, 59, P.3d 174 (2003). IN BIGGS, 334 F.3d. at 916 (CITING MORRISSEY V. BREWER, 408 U.S. 471, 481, 92, S. Ct. 2593, 33 2d.484 (1972) AND GREENHOLTZ 442, U.S. at 7, 8, 99, S. Ct. 2100). IN BIGGS THE NINTH CIRCUIT APPLIED THE SUPREME COURTS LANGUAGE IN MORRISSEY AND GREENHOLTZ WHEN ANALYZING WHETHER THE DENIAL OF AN INMATES PAROLE VIOLATED HIS CONSTITUTIONAL DUE PROCESS RIGHTS. THE COURT RECOGNIZED THAT IN THE CONTEXT OF DENYING AN INMATE PAROLE, RELIANCE "ON AN UNCHANGING FACTOR" SUCH AS THE CIRCUMSTANCES OF THE OFFENSE OR CONDUCT PRIOR TO IMPRISONMENT RUNS CONTRARY TO THE REHABILITIVE GOALS EXPOUSED BY THE PRISON SYSTEM AND COULD RESULT IN A DUE PROCESS VIOLATION."Id AT 912.

THE EASTERN DISTRICT COURT OF CALIFORNIA HAS ALSO CONSIDERED THE PROBLEM OF CONTINUING TO RELY ON UNCHANGING FACTORS IN DENYING PAROLE RELEASE DATES. SEE IRONS V. WARDEN CALIFORNIA STATE PRISON SOLANO 358, F. Supp. 2d 936, 947 E.D. CAL. 2005). the court IN IRONS NOTED THAT IF RELIANCE ON AN UNCHANGING FACTOR WERE ENOUGH TO CONSTITUTE A VALID DENIAL OF PAROLE, PETITIONER WOULD HAVE NO HOPE FOR EVER OBTAINING PAROLE. EXCEPT PERHAPS A PANEL IN THE FUTURE WILL ARBITRARILY HOLD THAT THE CIRCUMSTANCES WERE NOT THAT SERIOUS.

PETITIONER WOULD POINT OUT THAT IN THE CASE OF MARTIN V. MARSHALL (N.D. CAL. C 05 3486 MPH ) WHERE THIS INDIVIDUAL RECEIVED A RELEASE DATE AFTER HAVING 20 DISCIPLINARY VIOLATIONS UP TO 1995 (POSSESSION OF DRUGS, POSSESSION OF WEAPONS MATERIALS GAMBLING PARAPHERNALIA, THIS INDIVIDUAL WAS ALSO STABBED 3 times FROM 1987 To 1990 AS A RESULT OF BEING ENVOLVED WITH LOAN SHARKS. WITH THIS BEING THE CASE, THERE BEING NO EVIDENCE IN THE RECORD TO SHOW THAT THIS INDIVIDUAL IS NOT A THREAT TO PUBLIC SAFETY OR A RISK TO SOCIETY, ITS DIFFICULT FOR PETITIONER TO SEE HOW THERE COULD BE "ANY EVIDENCE" FROM HIS RECORD OF OVER 23 Years OF INCARCERATION TO DENIE PETITIONER HIS RELEASE DATE.

UNITED STATES DISTRICT COURT C.D. CALIFORNIA JAMES MASONER NO CV 03 1261 ER, ALSO MASONER V. WITEK NO CV 95 1814 IH.

THE MANDATORY LANGUAGE OF P.C. 3041 (b) IMPOSES AN AFFIRMATIVE OBLIGATION TO GRANT PAROLE, CREATING A LEGALLY COGNIZABLE LIBERTY INTEREST IN PAROLE AND A PRESUMPTION THAT PAROLE RELEASE WILL BE GRANTED IF CERTAIN CONDITIONS ARE MET.

( PETITIONER MEETS AND OR EXCEEDS ALL OF THE REQUIREMENTS OF CCR 2402 (D) AS IS SHOWN FROM HIS EXHIBITS IN THE RECORD). McQUILLIAN V. DUNCAN 306 F. 3d 895 (9th CIR. 2002), BIGGS V. TERHUME 334, F. 3d. 910 (9th CIR 2003). THE DEPRIVATION OF THIS IS "PERMISSIBLE" "ONLY" WHEN THE BOARD OF PRISON HEARINGS CAN PROVIDE THE EVIDENCE FROM THE RECORD SUPPORTING ITS DECISION. IN RE ROSENKRANTZ 29.Cal. 4th 616, 128,Cal.Rptr. 2d 104'59 P. 3d 174 (Supp. Ct 2002). BIGGS 334 F. 3d at 919.)

"THE SOME EVIDENCE STANDARD"

THE COURTS HAVE SAID THAT THE EVIDENCE HAS TO INDICATE (PROVE) THAT PETITIONER IS AN UNREASONABLE RISK TO SOCIETY OR A DANGER TO PUBLIC SAFETY TODAY". (SEE LEE SUPRA 143 Cal. App. 4th at P. 1408). THE FACTS MUST INDICATE A PRESENT DANGER TO THE COMMUNITY "TODAY" IF RELEASED (BAIR V. FOLSOM STATE PRISON 2005 WL 2219220, 12 n. 3 E.D. 2005)

IN RE SANDRA DAVIS LAWRENCE 59 Cal. Rptr. 3d. 537 Cal.app 2nd DISTRICT. 2007). IT IS SAID THAT ITS DIFFICULT TO FIND LAWRENCE'S COMMITMENT CRIME SUPPLIES "SOME EVIDENCE" RATIONALLY DEMONSTRATING SHE REPRESENTS AN UNREASONABLE DANGER TO THE PUBLIC SAFETY AT THE PRESENT TIME. THAT IS, HOW CAN IT BE SAID HER CRIME IS MORE PREDICTIVE OF FUTURE DANGEROUSNESS THAN THE MURDERS FOUND TO BE INSUFFICIENT FOR THAT PURPOSE BY OUR FELLOW APPELLATE COURTS.

IN RE SMITH SUPRA 109 Cal.App 4th at 492,134 Cal.Rptr,2d781.

IN RE SCOTT SUPRA 133 Cal.App.4th 579,34 Cal.Rptr.3d 905

IN RE LEE SUPRA 143 Cal.App.4th 1404,49 Cal.Rptr.3d,931

IN RE WIEDER SUPRA,145 App.4th,575,576,52 Cal.Rptr.3d,147

IN RE ELKINS SUPRA,144 Cal.App.4th 480,481,50 CA1.Rptr,3d,50

IN THE FEDERAL DISTRICT COURTS:

IN RER ROSENKRANTZ V. MARSHALL, SUPRA 444F.Supp.2d 1065

IN RE ROSENKRANTZ SUPRA, 29,Cal,4th,627,29,128.CAL.Rptr2d.104,59P 3d.174.

IN RE MARTIN V. MARSHALL SUPRA 431 F.SUPP.2d 1040.

IN RE WILLIS V. KANE 485.F. SUPP.2d. N.D. CAL 2007.

PETITIONER ASK IN ASSESSING JUST THESE CASES ABOVE (AND THERE ARE HUNDREDS MORE WHO HAVE HAD DATES) WHY THERE IS "NO EVIDENCE" FOUND IN THESE CASES AND YET THERE WAS "SOME EVIDENCE" FOUND IN PETITIONERS CASE TO DENIE HIM HIS RELEASE DATE.

DUE PROCESS DEMANDS A FINDING OF SOMETHING MORE THAN "SOME (ANY) EVIDENCE" TO PROTECT WHAT IS NOW DEFINED AS A VESTED LIBERTY INTEREST PROTECTED BY THE DUE PROCESS CLAUSE.

THE BORADS DECISIONS HAVE TO BE BASED ON A PERPONDERANCE OF THE EVIDENCE OF PAROLE SUITABILITY. GOOD CAUSE IS THE STANDARD (IN RE POWELL SUPR 45 CAL.3d. at 901).(IN RE BROWN 1967 CAL. 2d. 339, 342). (IN RE McCAIN 1960 55 CAL. 2d. 78, 87). (IN RE CASWELL 2001, 92, CAL. APP. 4th. 1017, 1024, 1026). ( IN RE CLUTCHETTE 1974 39, CAL. APP.3d. 561, 565). (IN RE MONZO 1973 33 CAL. APP. 144, 147 15 CCR 2450).

IN THE DISTRICT COURT, PATEL J. HELD THAT SOLE RELIANCE ON THE CIRCUMSTANCES OF A PETITIONERS OFFENSE AND CONDUCT PRIOR TO THE ~~OFFENSE~~ DENYING PAROLE CONSTITUTED A DUE PROCESS VIOLATION.

CONSTITUTIONAL LAW 272.5 PARDON AND PAROLE (46) IN THE PAROLE CONTEXT , A VIOLATION OF AN INMATES DUE PROCESS OCCURES WHEN (1) THE INMATE HAS BEEN DEPRIVED OF A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST IN PAROLE, AND (2) THE INMATE HAS BEEN DENIED ADQUATE PROCEDURAL PROTECTIONS IN THE PAROLE PROCESS, U.S. C.A. CONST. AMEND 14.

PETITIONER CONTENDS THAT IF THE BOARD OF PRISON HEARINGS WOULD HAVE SERIOUSLY CONSIDERED "FROM THE RECORD" PETITIONERS ACCOMPLISHMENTS OVER HIS PAST 23 YEARS OF INCARCERATION, THEY WOULD HAVE CLEARLY FOUND IN THE RECORD THAT THIS PETITIONER IS MORE THAN SUITABLE FOR PAROLE ACCORDING TO "ALL THE REQUIREMENTS" OF CCR 2402 (D).

PETITIONER SUBMITS TO THIS HONORABLE COURT THAT HIS SENTENCE HAS BECOME DISPROPORTIONATE TO HIS OFFENSE ACCORDING TO THE 8th AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IN THAT HE IS SUITABLE FOR PAROLE ACCORDING TO "ALL" OF THE REQUIREMENTS OF CCR 2402 (D) AND 3041 (A)(B). IN THAT PETITIONER IS 7 YEARS PAST HIS MINIMUM ELIGIBLE PAROLE RELEASE DATE OF SEPTEMBER 17th 2000. BEING DENIED HIS RELEASE DATE FOR A PERIOD OF 10 YEARS AND 7 MONTHS PAST HIS MEPD ACCORDING TO CCR 3041 WHEN THERE HAS BEEN NO EVIDENCE PRODUCED FROM THE RECORD TO PROVE THAT THIS PETITIONER IS A THREAT TO SOCIETY OR A RISK TO PUBLIC SAFETY AT ANY OF PETITIONERS PAROLE BOARD HEARINGS, THIS IS THE CUREL AND UNUSAL PUNISHMENT ACCORDING TO THE 8th AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

PENAL CODE 1168, ENTITLED "FIXING TERM OF IMPRISONMENT" READS AS FOLLOWS:

(a) EVERY PERSON WHO COMMITS A PUBLIC OFFENSE FOR WHICH ANY SPECIFICATION OF THREE TIME PERIODS OF IMPRISONMENT IN ANY STATE PRISON IS NOW PRESCRIBED BY LAW... SHALL BE SENTENCED PURSUANT TO CHAPTER 4.5 (COMMENCING WITH SECTION 1170) OF TITLE 7 OF PART 2.

PENAL CODE 1170 ENTITLED "LEGISLATIVE FINDINGS" DETERMINING LENGTH OF TERM, RESENTENCING "STATES IN PERTINENT PARTS THAT:

(a)(1) THE "LEGISLATURE" FINDS AND DECLARES THAT THE PURPOSE OF IMPRISONMENT FOR CRIME IS PUNISHMENT.

THIS PURPOSE IS BEST SERVED BY TERMS PROPORTIONATE TO THE SERIOUSNESS OF THE OFFENSE WITH THE PROVISIONS FOR UNIFORMITY IN THE SENTENCES OF OFFENDERS COMMITTING THE SAME OFFENSE UNDER SIMILAR CIRCUMSTANCES. THE

LEGISLATURE FURTHER FINDS AND DECLARES THAT THE ELIMINATION OF DISPARITY AND PROVISIONS OF UNIFORMITY OF SENTENCES CAN BEST BE ACHIEVED BY DETERMINATE SENTENCES FIXED BY STATUTE IN PROPORTION TO THE SERIOUSNESS OF THE OFFENSE AS DETERMINED BY THE LEGISLATURE TO BE IMPOSED BY THE COURT WITH SPECIFIED DISCRETION.

THE MATRICES FOR DETERMINING BASE TERMS (PLEASE SEE EXHIBIT A THE MATRIX OF BASE TERMS FOR FIRST DEGREE MURDER COMMITTED ON OR AFTER NOVEMBER 8th 1978 ), ALSO NOTE THAT THESE MATRIXS DO NOT "INCLUDE POST CONVICTION CREDITS AS PROVIDED IN 2410.

THE BASE TERMS FOR SPECIFIC OFFENSES ( EXHIBIT A ) CONTAINED IN THE 15 CCR 2403 INCLUDE THE LOWEST SUGGESTED BASE TERM TO REFLECT THE MINIMUM TERM SET FORTH BY STATUTE (PENAL CODE 3046) THE MATRICES INCLUDE THE CATEGORIES RELATING TO THE RELATIONSHIP OF THE PRISONER TO THE VICTIM AND THE GRAVITY AND CIRCUMSTANCES OF THE CRIME TO BE USED IN CONSIDERING MITIGATING AND AGGRAVATING FACTORS. THE TERMS SPECIFIED IN THE MATRICES WERE ESTABLISHED IN ACCORDENCE WITH PENAL CODE 3041 "IN A MANNER THAT WILL PROVIDE UNIFORM TERMS FOR OFFENSES OF SIMILAR GRAVITY AND MAGNITUDE" IN RESPECT TO THEIR THREAT TO THE PUBLIC AND THAT WILL COMPLY WITH THE SENTENCING RULES THAT THE JUDICIAL COUNCIL MAY ISSUE AND ANY SENTENCING INFORMATION RELEVANT TO THE SETTING OF "PAROLE RELEASE DATES".

PETITIONER SUBMITS THAT HE HAS HAD A MINIMUM ELIGIBLE PAROLE RELEASE DATE FOR 23 YEARS FOR A REASON (MEPD OF 9-17-2000). THIS REASON WAS HANDED DOWN BY THE LEGISLATURE TO THE BOARD OF PRISON HEARINGS AS A GUIDE LINE FOR THE BPH TO USE IN GIVING LIFE PRISONERS A FAIR AND UNBIASED PAROLE BOARD HEARING. FOR THE BOARD OR PANEL TO USE THE MATRIX WITH POST CONVICTION CREDITS TO SET LIFE TERM INMATES THEIR SENTENCES AT THEIR INITIAL PAROLE BOARD HEARINGS. THIS WAS DONE SO THE LIFE TERM INMATES WOULD KNOW IN YEARS ( THAT IF THEY PROGRAMED AND STAYED OUT OF TROUBLE) WHEN THEY WERE GOING HOME.

THE LAW IN THIS PROCESS IS BRIEF AND STRAIGHT FORWARD. IT BEGINS WITH PC 3041 (a) WHICH REQUIRES THE BOARD TO CONDUCT A PAROLE CONSIDERATION HEARING A YEAR BEFORE THE LIFE PRISONERS MEPD (ACTUAL TIME FOR GOOD/WORK TIME CREDITS TOTALS) IN MY CASE IT WAS AUGUST OF 1999. AT THIS POINT I HAVE SERVED THE TIME FOR THE CRIME I WAS CONVICTED OF. PC 3041 (b) BRIEFLY STATES THAT THE BOARD IS TO "SET A DATE" UNLESS CONSIDERATION FOR PUBLIC SAFETY IS AN ISSUE. WITHIN THIS PENAL CODE SECTION THERE IS A FEDERALLY PROTECTED LIBERTY INTEREST AND A PRESUMPTION OF

RECEIVING A PAROLE DATE PROVIDING THE "UNLESS CONSIDERATION FOR PUBLIC SAFETY" HAS BEEN PROVEN.

UP TO THIS POINT THERE ARE FEDERAL AND STATE CONSTITUTIONAL RIGHTS TO UPHOLD AND FEDERAL AND STATE LAW (USC 2254 (d)(1) (2) AND PC 3041 (a)(b). THEN THE PROCESS IS HANDED OVER TO THE BOARD OF PRISON HEARINGS PANEL WHICH IN THIS CASE WAS THE BOARD OF PRISON TERMS (BPT) WHICH IS NOW THE BOARD OF PRISON HEARINGS (BPH). OVER 30 YEARS AGO THEY WERE INSTRUCTED TO PUT ALL OF THEIR RULES, POLICIES, PROCEDURES, AND PRACTICES INTO CODE, ADMINISTRATIVE LAW. BY VIRTUE OF THIS, MY RIGHTS UNDER THE ADMINISTRATIVE LAW IS NOW PROTECTED UNDER THE DUE PROCESS CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS PROCEDURAL DUE PROCESS OR THE DUE COURSE OF LAW.

BRIEFLY THE PERTINENT RULES COVERING PAROLE HEARINGS FALL UNDER CALIFORNIA'S CODE OF REGULATIONS TITLE 15 DIVISION TWO: (CCR)

THE FIRST AND MOST IMPORTANT IS:

CCR 2000 (b) (48) GOOD CAUSE; A PAROLE AUTHORITY DECISION SHALL BE BASED UPON A PREPONDERANCE OF EVIDENCE, FACTUAL BASIS AND GOOD REASON FOR THE DECISION BEING MADE.

FOR MURDERS AFTER 10-8-1981 WE MOVE FORWARD TO ARTICLE 11 CCR 2400 WHICH STATES "WE SHALL NOW IMPLEMENT PC 3041" DEFINING PC 3041 CCR 2402 (a) STATES WE WONT SET A DATE IF WE FIND THE PRISONER IS AN "UNREASONABLE" RISK OR A DANGER TO SOCIETY IF RELEASED ON PAROLE AND CCR 2402 (b) STATES THAT THEY WILL CONSIDER "ALL RELEVANT AND RELIABLE INFORMATION AVAILABLE" SUCH AS THE FACTORS IN 2402 (c and d). HERE CCR 2402 (a) REASSERTS A PRESUMPTION OF SUITABILITY UNLESS THERE IS A FINDING BY A "PREPONDERANCE OF THE EVIDENCE" FACTUAL BASIS AND GOOD REASON (CCR 2000(b)(48) THAT PETITIONER IS AN UNREASONABLE RISK OR DANGER TO SOCIETY TODAY IF RELEASED ON PAROLE". NO SUCH INFORMATION HAS BEEN PROVEN BY THE CCR 2000 (b)(48) PREPONDERANCE AND FACTUAL BASIS STANDARD OR EVEN A COMMON SENSE STANDARD, THEREFORE THE PANEL OR BOARD WAS REQUIRED TO FIND PETITIONER SUITABLE IN ORDER TO COMPLY WITH THE FEDERALLY PROTECTED LIBERTY INTEREST REQUIREMENT OF "SET A DATE UNLESS CONSIDERATION FOR PUBLIC SAFETY IS A CONCERN (PC 3041)(b). THE BOARD FAILED TO FIND THAT PETITIONER IS AN UNREASONABLE RISK TO PUBLIC SAFETY OR THAT PETITIONER IS A THREAT TO SOCIETY IF RELEASED ON PAROLE BY A PREPONDERANCE OF EVIDENCE SO PC 3041(b) WAS NOT PROVEN.

FEDERAL AND STATE AND ADMINISTRATIVE LAW REQUIRES THE PANEL OR THE BORAD TO SET A RELEASE DATE.

NOW COMES CCR 2403 (b) MATRIX AS DESCRIBED ABOVE. HAD THE BOARD FOLLOWED THE RULES, PETITIONER WOULD HAVE BEEN FOUND SUITABLE FOR PAROLE AND WOULD HAVE HAD A RELEASE DATE SET ACCORDING TO CCR 2403 (b) WHICH IS THE CATEGORY A/1 (BOX) MATRIX SCALE (EXHIBIT A ) SETTING A TERM FOR A MAXIMUN OF 27 YEARS TO LIFE. MY MEPD (OR THE 25 YEAR MARK; ACTUAL TIME PLUS GOOD TIME CREDITS IS 9-17-2000) THE TWO YEAR ENHANCEMENT WAS COMPLETED IN APRIL OF 1985 WITH THE 419 DAYS CREDIT PETITIONER WAS GIVEN AT HIS SENTENCING IN OCTOBER OF 1984. PC -2930-2932 ( POST MONIGOLD REQUIRE THAT I SERVE 8 MONTHS PER YEAR, EQUALS 4 MONTHS PER YEAR FOR GOOD TIME CREDITS. PETITIONER WAS GIVEN HALF TIME CREDIT FROM 11-2-1984 UNTIL 2-9-1989 WHICH ADDS UP TO A TOTAL OF A LITTLE OVER 6 YEARS FOR THAT TIME PERIOD. AS OF THIS DATE PETITIONER (11-2-2007) HAS SERVED 30 YEARS OF HIS 27 YEARS TO LIFE SENTENCE ACCORDING TO HIS SCALE ON THE MATRIX CHART, WHICH IS 25 OR 26 OR 27 Years. PETITIONER IS 7 YEARS AND ONE MONTH PAST HIS PAROLE RELEASE DATE ACCORDING TO THE LAW UNDER WHICH HE WAS SENTENCED TO PRISON. THIS IS VIOLATION OF PETITIONERS 14th AMENDMENT RIGHT TO THE CONSTITUTION OF THE UNITED STATES. PETITIONER IS BEING HELD IN PRISON FOR REASONS THAT ARE ALMOST 24 YEARS OLD AND FOR REASONS THAT HE WILL NEVER BE ABLE TO DO ANYTHING ABOUT. PETITIONER WAS NOT SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE.

THE EXPOST FACTO ISSUE OF THE AEDPA.

APPLICATION OF A NEW LAW , OR RULE , OR PROCEDURE THAT ADDS ADDITIONAL PUNISHMENT TO PETITIONERS SENTENCE WITHOUT AN ADDITIONAL CRIME BEING COMMITTED IS IN VIOLATION OF THE EXPOST FACTO LAW.

- (1) IS HELD RETROACTIVELY
- (2) INCREASES THE MEASURE OF PUNISHMENT.

GARNER V. JONES U.S. 2000 SAYS ALSO IF IT SUBSTANTIALLY INCREASES THE ~~RISK~~ OF INCREASING THE PUNISHMENT AS APPLIED

TO PETITIONER. PETITIONER HAS READ THAT THIS AEDPA LAW IS BEING APPLIED DUE TO THE FACT THAT HE DIDNT FILE HIS WRIT UNTIL AFTER THIS AEDPA LAW CAME INTO EFFECT. PETITIONER SUBMITS TO THIS HONORABLE COURT THAT HIS READING OF THIS EXPOST FACTO LAW IS THAT ALL THE PUNISHMENT THAT PETITIONER IS TO PAY FOR THIS CRIME THAT HE COMMITTED WAS HANDED DOWN TO HIM ON THE DAY HE WAS SENTENCED TO PRISON, ANYTHING ADDED TO HIS SENTENCE AFTER BEING SENTENCED TO PRISON IS EXPOST FACTO.

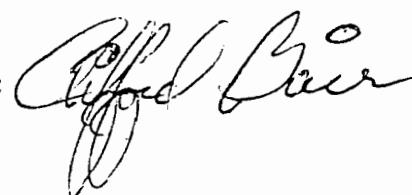
PETITIONER WAS SENTENCED TO PRISON IN OCTOBER OF 1984, AND THIS AEDPA LAW DIDNT COME INTO EFFECT UNTIL 1996.

THIS AEDPA IS EXPOST FACTO AND CANNOT BE APPLIED TO HIS CRIME OR HIS CASE.

PETITIONER DECLARES UNDER PENALTY OF PERJURUY THAT TO THE BEST OF HIS KNOWLEDGE ALL OF THE ABOVE IS TRUE AND CORRECT.

EXCUTED ON THIS DATE: 10/29/2007

SIGN:



THE ATTORNEY GENERAL HAS BROUGHT UP THE FACT THAT PETITIONER WAS GIVEN A 128 COUNSELING CHRONO IN 2005 FOR DISRESPECTING STAFF. PETITIONER IS SUBMITTING HIS EXPLANATION OF THE WRITE UP EXHIBIT (B).

PETITIONER HAD A SEVER MEDICAL PROBLEM AT THE TIME HE WAS IN THE DENTAL OFFICE ON JUNE 1st, 2005. THIS IS PROVEN BY THE EVIDENCE THAT PETITIONER HAS SUBMITTED IN EXHIBIT (B) FROM THE MEDICAL DEPARTMENT.

AS IS EXPLAINED BY PETITIONER IN HIS EXPLANATION OF THIS WRITE UP. ~~WAS~~ THE DENTIST NOR WAS THE DENTAL ASSISTANT ANYWHERE NEAR WHERE PETITIONER COULD SEE THEM WHEN HE WAS IN SEVER PAIN IN THE DENTAL CHAIR AND HE HAD TO ADJUST HIS GROIN AREA. IN PETITIONERS EXPLANATION OF OVER TWO YEARS AGO HE STATES THAT THE DENTIST NOR THE ASSISTANT WAS ANYWHERE NEAR WHERE HE COULD SEE THEM.

AS IS ALSO EVIDENCED IN PETITIONERS 602, ITS CLEAR THAT THE DENTIST NOR THE ASSISTANT WAS ANYWHERE NEAR PETITIONER WHEN HE HAD TO ADJUST HIS GROINING AREA. EVEN WITH THE EVIDENCE FORM THE MEDICAL DOCTORS, PETITIONER FAILED TO GET A FAIR HEARING TO REMOVE THIS 128 CHRONO FROM HIS RECORD.

PETITIONER DECLARES UNDER PENALTY OF PERJURY THAT THE ABOVE AND THAT EXHIBIT (B) IS TRUE AND CORRECT.

EXECUTED ON THIS DATE: 18/31/07

RESPECTFULLY SUBMITTED

SIGN



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In Re Powell (1988) 45 Cal.3d 894,901,248 CR 431,435	
Trop V. Dulles 356 U.S. 86,100, 78 S.Ct.590,597 (1958)	
Furman V. Georgia 408 U.S. 238,92 S.Ct. 2726,33 L.Ed 2d 346 (1972)	
In Weems V. U.S. 217 U.S. 349; 30 S.Ct. 544,549	
Furman Supra at P.2742,2744	
In Re Rodriguez (1975) 14 Cal. 3d 639; 122 Cal.Rptr 552	
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Solem V. Helm 463 U.S. 277; 103 S.Ct.3001; 77 L.Ed.2d 637	
In Harmelin V. Michigan 501 U.S. 957; 111 S.Ct. 2680; 115 L.Ed 2d 863	
Harmelin Supra at 2702, 2705	
Ramirez Supra at 570,569	
In Re Davan 231 Cal. App.3d 184	
In Re Rosenkrantz 2002 DJDAR at P.1440, 14111	

SUMMARY OF THE CASE

In the present case the prisoner was received by the California California Department of Corrections on 2 November, 1984, for the crime of First degree murder. (PC 187(a), case number 12451C). Petitioner was sentenced to 25 years to life including a 2 year enhancement for false imprisonment. The prisoner has a MEPD of 9-17-2000.

The petitioner has had five documentation hearings. The initial parole hearing and two (2) subsequent parole hearings. Petitioner has not had a parole release date set.

The conviction case involves the theft of a truck in Visalia, the theft of the victim's auto, the death of Mrs Aikens and the false imprisonment of Miss Fomasi. Miss Fomasi arrived at Mrs Aikens residence while petitioner was tying up Mrs Aikens. Petitioner knew Mrs Aikens from before, due to the fact that he had been employed by her. Petitioner went to her home because he believed she would lend him her car. When she answered the door petitioner asked to borrow the car. She told petitioner that she did not remember who he was. At that time petitioner walked into her home and walked Mrs Aikens to the bedroom, where he pulled the telephone from the wall and tied her up. Petitioner then pulled the top mattress half way off the bed to hide her. At that time there was a knock on her front door. Petitioner waited, but Ms Fomasi was persistent. Petitioner then opened the door and had her come into the front room where petitioner tied her up. Petitioner then went into the garage and opened the outside door. Petitioner came back into the house and found Ms Fomasi was almost completely untied. Petitioner retied her and then left with Mrs Aikens car. About forty miles from her residence the car became stuck on the side of the road, so petitioner left it there. Petitioner saw a bar and noticed that there was a boat dock very near it. There was a boat at the dock so petitioner took it. Petitioner used it over night, during which time the boat drifted back to shore where the owner found.

it, as well as petitioner. The owner informed petitioner that the police were on their way, at which time petitioner left the boat and began walking away. About twenty minutes later petitioner was arrested. It was soon after that time that petitioner was informed that Mrs Aikens had died from the trauma.

Reason for Review

PETITIONER'S PAROLE BOARD HEARING OF MARCH 30TH 2007  
 THE PANEL OPENED PETITIONER'S HEARING BY SWEARING IN PETITIONER FOR THE RECORD. THEN READ A SERIES OF INFORMATIONAL INSTRUCTIONS THAT INCLUDED A STATEMENT THAT PETITIONER DID NOT HAVE TO DISCUSS OR ADMIT TO THE COMMITMENT OFFENSE. THE COMMISSIONER STATED WE ARE NOT HERE TO RETRY YOUR CASE. THIS PAROLE EXCETS THE FINDINGS OF THE TRIAL COURT. PETITIONER IS ASK IF HE WILL BE DISCUSSING HIS CRIME TODAY. AS SOON AS PETITIONER SAYS YES, THE COMMISSIONER CONTRADICTS HIMSELF AND BEGINS RETRYING PETITIONER REGARDING HIS CRIME. THE COMMISSIONER READS WHAT HE CALLS THE FACTS OF THE CASE INTO THE RECORD (I.E., A DESCRIPTION OF THE CRIME) AND THEN QUESTIONS PETITIONER AS TO HIS FACTS. THIS LINE OF QUESTIONING IGNORES PETITIONER'S RIGHTS TO BE HEARD REGARDING MATTERS OF SUITABILITY AND TOTALLY FOCUSES ON THE COMMITMENT OFFENSE TO BUILD A RECORD OF UNSUITABILITY RATHER THAN TO COVER THE MATERIALS IN THE RECORD AND THE COMBINE OF MATERIALS PETITIONER HAS BROUGHT TO THE HEARING TO PROVE PETITIONER IS SUITABLE FOR HIS LEGAL RELEASE DATE. OF WHICH BY LAW IS THE TRUE PURPOSE OF PETITIONER'S PAROLE BOARD HEARING. (5 CCR SECS 2281/2402).

PETITIONER IS BEING DENIED HIS RELEASE DATE WITHOUT ANY CONSIDERATION BEING GIVEN TO HIS INCARCERATION RECORD OF THE PAST 23 YEARS, WHICH PROVES THAT PETITIONER IS NOT A THREAT TO SOCIETY NOR A RISK TO PUBLIC SAFETY.

Biggs v. Terhune, 334 F. 3d 910 (9th Cir. 2003)

STAND FOR THE PROPOSITION THAT CONTINUED RELIANCE UPON UNCHANGING FACTORS SUCH AS THE NATURE OF THE OFFENSE "WITHOUT MORE" WITH CONTRAVENES THE DUE PROCESS CLAUSE. THIS PRINCIPLE WAS NOT REVERSED IN IRONS. IN SASS AND IN IRONS AND HERE IN PETITIONER'S CASE THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD DEMONSTRATING REHABILITATION. IN ALL THREE CASES THE BOARD OF PRISON GUARDIANS GAVE NO WEIGHT TO THIS EVIDENCE IN

Reason for Review

In Reaching Its Conclusion THAT SASS AND IRVINS AND now PETITIONERS PRESENTLY CONSTITUTED A DANGER TO SOCIETY AND THUS WERE NOT SUITABLE FOR PAROLE.

THE COURT STATED: WE HOPE THAT THE BOARD WILL COME TO RECOGNIZE THAT IN SOME CASES, INDEFINITE DETENTION BASED SOLELY ON AN INMATE'S COMMITMENT-DEFENSE, REGARDLESS OF HIS REHABILITATION, WILL AT SOME POINT VIOLATE DUE PROCESS, GIVEN THE LIBERTY INTEREST THAT FLOWS FROM THE RELEVANT CALIFORNIA STATUTES. BIGGS 334 E. 3d at 910 (9th Cir. 2003) IT IS CLEAR THAT A DUE PROCESS VIOLATION HAS OCCURRED IN PETITIONERS CASE.

PETITIONER CONTENTS THAT THE POINT OF TIME TO WHERE PETITIONERS DUE PROCESS RIGHTS HAS BEEN VIOLATED HAS BEEN REACHED BY THE BPT AFTER RECEIVING HIS 3rd 3 YEAR DENIAL WITH NO EVIDENCE PRODUCED BY THE BPT TO SHOW OR PROVE THAT PETITIONER IS A THREAT TO SOCIETY OR A RISK TO PUBLIC SAFETY.

PETITIONERS MELD WAS 9/17/2000 HE HAS HAD 3 PAROLE BOARD HEARINGS 4/2000 7/2003 3/2007 WHERE THERE HAS BEEN NO EVIDENCE PRODUCED TO SHOW OR PROVE THAT THIS PETITIONER IS A RISK TO PUBLIC SAFETY OR A THREAT TO SOCIETY. JUST SAYING THE WORDS BY THE BPT OVER AND OVER AND OVER AGAIN THAT THIS PETITIONER NEEDS MORE TREATMENT IS NOT EVIDENCE THAT PROVES THAT ALL OF PETITIONERS PSYCHOSOCIAL EVALUATIONS OVER THE PAST 10 YEARS ARE WRONG. PETITIONER HAS FURNISHED THE BPT WITH ALL THE EVIDENCE NECESSARY OVER THESE PAST 3 BOARD HEARINGS (EXHIBITS A, B, C, D, E, F, G, H.) TO PROVE HE IS MORE THAN SUITABLE TO BE RELEASED BACK TO SOCIETY. THE BPT HAS TOTALLY IGNORED AND REFUSED TO CONSIDER THIS EVIDENCE.

SEE EXHIBIT AA FOR COMPLETE HEARING TRANSCRIPTS.  
SEE EXHIBITS BB AND CC FOR PETITIONERS 2000 & 2003 HEARING DECISIONS.

PETITIONER SUBMITS HIS MARCH 30TH 2007 PAROLE BOARD HEARING TRANSCRIPTS ALONG WITH EXHIBITS A, B, C, D, E, F, G, H THAT PROVE THERE IS NO EVIDENCE PRODUCED BY THE BOARD OF PAROLE HEARINGS (BPH) TO SHOW OR PROVE THAT PETITIONER IS A THREAT TO SOCIETY OR THAT HE IS A RISK TO PUBLIC SAFETY.

### REASONS FOR DENIAL PAGE 97

THE DECISION STATES: Sir, This Panel has reviewed all information received from the public and relied on the following circumstances in concluding that you are not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. And looking at the crime, we find that the offense was carried out in an especially cruel or callous manner. There were multiple victims in this case (lines 8 through 13).

PAGE 98 THE AGE AND CIRCUMSTANCES OF YOUR INITIAL CONTACT WITH MRS AIKENS (Assault 10) INDICATES A PARTICULAR CRUELTY AND DISREGARD FOR THE SAFETY OF OTHERS AND A DISREGARD FOR HUMAN SUFFERING. IN FACT MRS AIKENS DIED OF HEART FAILURE WHILE SHE WAS BOUGHT BY YOU (LINES 2 THROUGH 6).

WE ALSO MAKE A FINDING THAT YOUR SOCIAL HISTORY BEFORE THIS CRIME WAS VERY CUSTODIAL IN THAT YOU HAD HAD MANY FAILED MARRIAGES (4 THROUGH 16).

PAGE 99 YOU STOLE OTHER PEOPLE'S CARS, YOU BURNED THEM. WE ALSO FIND THAT YOUR MOTIVATION FOR THIS CRIME WAS JUST REALLY INEXPLICABLE (LINES 17 AND 18).

PAGE 101 BEFORE THIS CRIME WAS COMMITTED, YOU HAD A RECORD THAT INVOLVED CARRYING A STORED-OFF SHOTGUN THAT WAS LOADED. ON THIS CASE HERE, YOU BROUGHT A SHOTGUN WITH YOU FROM VISALIA TO BODEGA BAY (LINES 21 THROUGH 24). THERE IS NO WHERE IN THE RECORD OF PETITIONER'S CRIME WHERE IT IS PROVEN THAT HE HAD A SHOTGUN WITH HIM. THE ONLY EVIDENCE THAT PETITIONER HAD A SHOTGUN WITH HIM WAS HIS CONFESSION AT HIS PAROLE BOARD HEARINGS.

PAGE 102. SHOTGUNS INVOLVING HUMAN BEHAVIOR AND NOT RELATED TO FISHING OR HUNTING CAN ONLY HAVE ONE DEADLY ENDING, (LINES 2 THROUGH 4). THERE IS NO RECORD ANYWHERE IN PETITIONER'S CASE OR HISTORY WHERE HE HAS HARMED OR INJURED ANYONE WITH A SHOTGUN.

ANOTHER DISTURBING FACTOR IS THAT IN 1982, YOU DROVE YOUR VEHICLE INTO THE STORE THAT WAS OWNED BY YOUR IN-LAWS (LINES 5 AND 6). AND UNDER THE CIRCUMSTANCES AND THE TOTALITY, THAT'S A CRIME OF VIOLENCE (LINES 7 AND 8). THERE COULD HAVE BEEN A CUSTOMER THERE JUST STANDING BEHIND THE DOOR. THAT'S WHY I CALL THIS A CRIME OF VIOLENCE (LINES 13 THROUGH 15). PETITIONER SUBMITS THE ABOVE INFORMATION AS A PRIVATE EXAMPLE OF THE BFT USING (WHAT IF) (IF ONLY) (COULD HAVE HAPPENED) KINDS OF PARSES AND LANGUAGE TO RAISE THE LEVEL OF PETITIONER'S CRIME TO DENIE PETITIONER HIS LEGAL RELEASE DATE. THE REASONS GIVEN ON PAGE 102 ARE FALSE INFORMATION put into THE RECORD OF THINGS THAT DID NOT HAPPEN. IT'S THIS KIND OF PARSING AND LANGUAGE THAT THE BFT USES TO DENIE PETITIONER HIS LEGAL AND JUST RELEASE DATE THAT MAKES A SHAM OUT OF THE ENTIRE PAROLE SYSTEM.

PAGE 63. IN THIS CASE THERE WERE MULTIPLE VICTIMS ATTACKED WHO WERE PARTICULARLY VULNERABLE. YOU HAD AN OPPORTUNITY TO CEASE. AND IT APPEARS FROM THE STEALING OF THE CAR TO THE BURNING OF THAT PICK UP (ANOTHER ISSUE I WAS NOT CONVICTED OF BUT DID CONFESSIONS TO AT MY BOARD HEARINGS), THAT EVERYTHING YOU DID ON THAT TRIP WAS PREMEDITATED AND DELIBERATED AND PLANNED AND CALCULATED. THIS IS NOT TRUE AND THE ENTIRE RECORD OF EVENTS SHOWS THAT PETITIONER HAD NO IDEA OF WHAT HE WAS GOING TO DO FROM ONE MINUTE TO THE NEXT (LINES 4 THROUGH 9).

WE BELIEVE THAT YOU CONTINUE TO NEED THERAPY TO FACE, UNDERSTAND, AND Cope WITH STRESS IN A NON-DESTRUCTIVE MANNER, AS WELL AS TO COME TO TERMS WITH OTHER ISSUES (LINES 16 THROUGH 19). THESE REASONS ARE THE VERY SAME REASONS USED TO DENY PETITIONER HIS RELEASE DATE AT HIS 2000 AND 2003 BOARD HEARINGS WITH ABSOLUTELY NO EVIDENCE PRODUCED AT ANY OF PETITIONER'S LAST 3 HEARINGS TO SHOW OR PROVE HE NEEDS MORE THERAPY. THE EVIDENCE THAT PETITIONER HAS PRODUCED IN HIS EXHIBITS OF HIS PHYSIOLOGICAL EVALUATIONS OF 1998 THROUGH 2006 PROVE THAT PETITIONER IS NOT IN NEED OF THERAPY AND IN FACT PROVE THAT PETITIONER IS MORE THAN READY TO BE RELEASED BACK INTO SOCIETY AS A PRODUCTIVE HUMAN BEING. JUST SAYING THE WORDS THAT PETITIONER NEEDS MORE THERAPY IS NOT EVIDENCE.

ALTHOUGH YOU'VE NEVER PHYSICALLY ABUSED WOMEN WITHIN THE MEANING OF 273.5, THAT IS IN REGARD TO THE PERSON YOU WERE LIVING WITH, YOUR DESCRIPTION OF YOUR RELATIONSHIPS WITH YOUR OTHER WIVES INDICATE THAT THERE WAS MANY, MANY AGREEMENTS. THAT ALL OF YOUR RELATIONSHIPS WITH WOMEN INVOLVED ARGUING AND

PAGE 103 CONTINUED.

AND ULTIMATELY DETERIORATED IN THE FORM OF A DIVORCE.  
 (LINES 1 THROUGH 4). I ASK THIS HONORABLE COURT WITH ALL  
 DUE RESPECT WHAT MY HAVING AGREEMENTS WITH MY EX-WIVES  
 OVER 23 1/2 YEARS AGO HAS TO DO WITH MY SUITABILITY FOR A  
 PAROLE RELEASE DATE TODAY. WHEN ALL THE EVIDENCE IS LOOKED  
 AT AND TAKEN SERIOUSLY (EXHIBITS A, B, C, D, E, F, G, H) THAT  
 PETITIONER HAS PRESENTED TO THIS HONORABLE COURT. IT IS  
 CLEAR TO SEE WITH ALL THIS WORK IN AFTER CARE, VICTIMS  
 AWARENESS, STRESS MANAGEMENT, KNOW THYSELF, LOOKING AT  
 ALL THE SELF HELP WORK THIS PETITIONER HAS DONE AND CAN-  
 DLES TO DO OVER THE PAST 23 1/2 YEARS, WITH THESE EXHIBITS  
 PETITIONER HAS PROVED HIS SUITABILITY FOR PAROLE RELEASE.

PAGE 104. AND TO THAT EXTENT, SIR, YOU CONTINUE TO NEED MORE  
 THERAPY AND MORE INSIGHT AND MORE WORK IN REGARD TO ESTABLISHING  
 THAT YOU ARE NOT A THREAT TO ANYBODY ELSE (LINES 5 THROUGH 7). THESE  
 KINDS OF STATEMENTS MADE BY THIS BPP PANEL PROVE THAT EVERY-  
 THING THAT THIS PETITIONER HAS ACCOMPLISHED OVER THESE PAST 23 1/2  
 YEARS HAS BEEN TOTALLY AND COMPLETELY IGNORED IN THEIR DECISION  
 MAKING PROCESS. THIS PETITIONER HAS BEEN SOBER AND DRUG FREE  
 SINCE THE DAY OF HIS ARREST, AS HAS BEEN PROVED BY THE MANY  
 DRUG AND ALCOHOL TEST THAT HE HAS PASSED OVER THESE PAST 23 1/2  
 YEARS. HIS DISCIPLINARY RECORD IS ALSO A TESTAMENT THAT PROVES  
 THIS PETITIONER IS SERIOUS ABOUT HIS RELEASE BACK INTO SOCIETY,  
 IN THAT HE HAS HAD ONLY ONE 115 IN 23 1/2 YEARS OF INCARCERATION  
 AND THIS WAS FOR SMOKING A CIGARETTE IN AN UNAUTHORIZED  
 AREA IN 1998.

PAGE 104 CONTINUED

Your MARRIED now, but we find that your contact with your current wife, Valerie, that you met while you were INCARCERATED (not true) is not a source of stability to you as was said by the most recent psychologist because you have NEVER HAD A RELATIONSHIP WITH HER AS HUSBAND AND WIFE OUTSIDE THIS FACILITY. So it's an error to say that, yeah, THAT MARRIAGE IS A SOURCE OF STABILITY TO YOU (lines 11 to 18).

And therefore that pretrial statement, you've shown you've worked out a lot of your issues with women (lines 18 through 20).

PETITIONER SUBMITS AGAIN THAT THE ABOVE KINDS OF STATEMENTS MADE BY THIS BPP PANEL PROVE THAT ALL OF THE EVIDENCE PRODUCED BY PETITIONER TO PROVE HIS SUITABILITY FOR PAROLE WAS TOTALLY AND COMPLETELY IGNORED.

FOR THE BPP PANEL TO CONTINUE TO DENY PETITIONER HIS RELEASE DATE USING THE REASONS STATED IN THEIR DECISION OF PETITIONER'S MARCH 30TH 2007 PAROLE BOARD HEARING IS A VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS AS IS GUARANTEED BY THE CONSTITUTION'S 8TH AND 14TH AMENDMENTS TO THE UNITED STATES. GIVEN THE LIBERTY INTEREST THAT FLOWS FROM THE CALIFORNIA STATUTES (BIGGS 334 F.3d at 910 (9th Cir. 2003), CAL PENAL CODE 3041(a)(6), MCGOWAN V. DUNAW 306 F.3d 885, 901-902 (9th Cir. 2003)). IN RE ROSENTHAL 29 CAL. 4TH 616 (SUT. CT. 2002). IN RE ROSENTHAL (2000) 80 CAL. 4TH 409, 95 CAL. Rptr. 2d 279 (bid) UNITED STATES DISTRICT COURT CENTRAL DISTRICT CALIFORNIA, MASONER V. CALIFORNIA ET AL CASE NO. CV-03-1261 ED.

ALL OF THE REASONS TO DENY PETITIONER HIS RELEASE DATE USED BY THIS BPP PANEL HAVE NO EVIDENCE TO JUSTIFY PETITIONER'S PAROLE RELEASE DATE.

## TABLE OF AUTHORITIES

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BOARD OF PAROLEES U. ALLEN 480 U.S. 369 377-78 (1989)

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RE Scott 118 CAL. APP. 4TH 821 (Ca. App. 2004).

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RE STRUM 11 CAL. 3d 268 (Ca. 1994) 268, 269

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PEOPLE U. RAMIREZ 25 CAL. 3d 260 (Ca. 1979) 94 CAL. 4TH 549 AT 550, 568 (2001) 564

HUBBARD U. SUPERIOR COURT 19 CAL. 4TH 1138-1151 n. 19.

## CALIFORNIA CODE OF REGULATIONS (15 CCR)

15 CCR 2403 (3)	2280
3375.5	2400
2000 (b) (66)	2402 (c)
2403	2402 (d)
2401	2281 (c)
2402	2402 (a)

## OTHER SUTHORITIES

## CALIFORNIA RULES OF COURT.

SEE EXHIBIT A FOR PENAL CODE 1168 ENTITLED "FIXING TERM OF IMPRISONMENT.

SEE EXHIBIT A PENAL CODE 1170 ENTITLED "LEGISLATIVE FINDINGS" DETERMINING LENGTH OF TERM.

SEE EXHIBIT A FOR MATRICES CHART FOR DETERMINING BASE TERMS FOR SPECIFIC OFFENSES CONTAINED IN 15 CCR 2403.

SEE EXHIBIT B FOR THE 128A WRITE UP THAT PETITIONER RECEIVED ON JUNE 1ST 2005.

# EXHIBIT A

comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates."

Furthermore, the initial statement of reasons in this regulatory action stated as follows:

*In keeping with triad sentencing structure of the determinate sentencing law, each category contains a mitigated, middle and aggravated term. Mitigating and aggravating factors are contained in 15 CCR §§ 2404 and 2405. Each ascending category contains circumstances more egregious than the last, therefore, the suggested terms increase.*

Finally, historically, society has condemned a violent crime committed against a victim unknown to a perpetrator more so than a crime committed on a victim known to the perpetrator. This is due to society's fear of random individuals becoming victims for no explicable reason. This is evidenced by the matrices established approximately 30 years ago in §§ 2403(b) and (c).

Accommodation to Commenter No. 1: For the reasons stated above, the Board does not believe that further modification to the regulations is necessary as a result of this comment. The Board thanks Mrs. Ramirez for her comments and participation in the rulemaking process.

Commenter #2 — Donald A. Miller, letter dated May 29, 2004, received June 14, 2004

Commenter requests the following:

1. The correct definition of attempted willful, deliberate, and premeditated murder be re-incorporated into the final paragraph of proposed section 2400.

Response:

The proposed amendments to 15 CCR § 2400 did not delete the definition of "attempted willful, deliberate, and premeditated murder" from the final paragraph. The proposed amendments to 15 CCR § 2400 deleted the definition of "life prisoner" from the final paragraph. Subsection (b)(3) of 15 CCR § 2000, entitled "Rules of Construction and Definitions" provides, in pertinent parts, that the definition of "life prisoner" is:

*[a] prisoner serving a sentence of life with the possibility of parole. . . . Life sentences may be imposed for the following crimes or conspiracy to commit any of the following crimes: . . .*

*(K) Attempted willful, deliberate, and premeditated murder as defined in Penal Code section 189.*

As to her general comments contending the matrices contained in 15 CCR § 2403 increase the sentences for crimes and her questions regarding the categories relating to the relationship of the prisoner to the victim and the gravity and circumstances of the crime, BPT responds as follows:

Penal Code § 1168, entitled "Fixing Term of Imprisonment," reads as follows:

- (a) *Every person who commits a public offense, for which any specification of three time periods of imprisonment in any state prison is now prescribed by law . . . shall, be sentenced pursuant to Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2.*
- (b) *For any person not sentenced under such provision, but who is sentenced to be imprisoned in the state prison, . . . the court imposing the sentence shall not fix the term or duration of the period of imprisonment.*

Penal Code § 1170, entitled "Legislative Findings—Determining Length of Term—Resentencing," states in pertinent parts that:

- (a)(1) *The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.*
- (b) *When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime.*

The matrices for determining base terms for specific offenses contained in 15 CCR § 2403 include the lowest suggested base term to reflect the minimum term set forth by statute (Penal Code § 3046). The matrices include the categories relating to the relationship of the prisoner to the victim and the gravity and circumstances of the crime to be used in considering mitigating and aggravating factors. The terms specified in the matrices were established in accordance with Penal Code § 3041, "in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will

*ADDITIONS TO THE PROPOSED AGREEMENT ARE INDICATED IN UNDERLINE, AND DELETIONS ARE STRIKETHROUGH ("—") FORMAT*

(b) Matrix of Base Terms for First Degree Murder committed on or after November 8, 1978.

CIRCUMSTANCES				
FIRST DEGREE MURDER Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290 2410)	A. <i>Indirect</i> Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack, a crime partner actually did the killing.	B. <i>Direct or Victim Contribution</i> Death was almost immediate or resulted at least partially from contributing factors from the victim; e.g., victim initiated struggle or had goaded the prisoner. This does not include victim acting in defense of self or property.	C. <i>Severe Trauma</i> Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.	D. <i>Torture</i> Victim was subjected to the prolonged infliction of physical pain through the use of nondeadly force prior to act resulting in death.
I. <i>Participating Victim</i> Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred, e.g., crime partner, drug dealer, etc.	25-26-27	26-27-28	27-28-29	28-29-30
II. <i>Prior Relationship</i> Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	26-27-28	27-28-29	28-29-30	29-30-31
III. <i>No Prior Relationship</i> Victim had little or no personal relationship with prisoner or motivation for act resulting in death was related to the accomplishment of another crime, e.g., death of victim during robbery, rape, or other felony.	27-28-29	28-29-30	29-30-31	30-31-32
IV. <i>Threat to Public Order or Murder for Hire</i> The act resulting in the victim's death constituted a threat to the public order including the murder of a police officer, prison	28-29-30	29-30-31	30-31-32	31-32-33

# EXHIBIT B

602 INFORMATION

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS  
CDC-128-A

BAIR

C-95079

L-346

On Wednesday, June 01, 2005, at approximately 0830 hours, Inmate BAIR, C-95079, housed in L-346, was seated in the Dental Chair for a scheduled appointment in Mainline Dental Clinic. During the appointment I observed him fondling his private area. This was observed by the Dental Assistant, Vasmine Rhodes, RDA who was present during the appointment. I told him to stop and that if this behavior were observed again, he would be dismissed immediately from the Dental Clinic.

Orig: C-File  
cc: Counselor  
Inmate

*J. Diehl, R.*  
DIEHL, R.  
Dentist  
Mainline Dentist office, 2<sup>nd</sup> Watch

3005(a) Behavior

Date: 6-1-05

3004(b) Inmate's Respect towards Staff

128-A Counseling Chrono DVI

Clifford Bair C95079

L3 346

P.O. Box 600

Tracy, California 95378-0600

To The State of California Board of Prison Hearings,  
To whom it may concern.

Subject: The 128-A THAT I RECEIVED ON June 1st 2005.

On June the 1st 2005 I was written A 128-A Counseling  
Citation Here At DUI Tracy California. I RECEIVED THIS CITATION  
ON July 5th 2005. On July THE 5th 2005 I WROTE A DETAILED  
DESCRIPTION OF MY MEDICAL PROBLEM AND I APPOINTED TO Doctor  
Dietl AND Miss Rhodes. I SENT A COPY TO MY COUNSELOR AND TO  
MY WIFE, TO Doctor Dietl AND Miss Rhodes.

At this time I HAD NO IDEA THAT I COULD GET THIS 128-A  
I Do know THAT I BREAKAGE OF THE LAW OR THE RULES OF THE  
TITLE 15 ARE NO EXCUSE. But I Still HAD NO IDEA, AT THIS TIME

IN MAY OF 2006 When I WAS HAVING MY PSYCHOLOGICAL  
EVALUATION FOR MY 2006 Board Hearing. I WAS TELLING THE  
PSYCHOLOGIST About MY 128-A THAT I HAD RECEIVED IN  
June OF 2005. I TOLD HIM About MY WRITTEN RESPONSE  
AND HE TOLD ME HOW WORTHLESS THAT WAS, AND TOLD ME THAT  
I NEEDED TO GET THAT 128-A. This IS When I FOUND OUT  
THAT I SHOULD HAVE AS soon AS I RECEIVED IT.

I FILED MY GOS (cas No. 06-01264) ON MAY THE 10TH  
2006.

B. 5/10/06

THE ACTION REQUESTED WAS: I WANTED A COPY OF MY MEDICAL RECORDS AS OF JULY 1ST THROUGH JULY THE 5TH 2005 THAT WILL PROVE THAT I WAS SEEN BY DOCTOR FOX AND THAT HE WROTE ME A PRESCRIPTION FOR MY MEDICAL CONDITION IN MY GROIN AREA. ALSO TO HAVE THE 128-A REMOVED FROM MY RECORDS

THE GOS (C. INFORMAL LEVEL 5/17/06) PARTIALLY GRANTED. APPROPRIATE MEDICAL STAFF HAVE BEEN NOTIFIED AND THE REQUESTED COPIES WILL BE FORWARDED TO YOU AT THE EARLIEST CONVENIENCE. MEDICAL STAFF DO NOT HAVE THE AUTHORITY TO REMOVE DOCUMENTS FROM YOUR FILE.

D. FORMAL LEVEL 5/25/06 602

SIR I AM RESPECTFULLY SUBMITTING A COPY 3 PAGES OF MY DOCTORS APPOINTMENT WITH DR FOX ON JUNE 16TH 2005 AND THE COPY OF THE PRESCRIPTION THAT HE ORDERED FOR ME FOR MY GROIN INFECTION. WITH THIS EVIDENCE I AM ASKING THAT THIS 128-A BE REMOVED FROM MY FILE. 5/25/06

E. REVIEWERS ACTION FIRST LEVEL PARTIALLY GRANTED

PAUL HAYTER, OFFICE ASSISTANT MEDICAL RECORDS - YOU WERE PROVIDED DESIRED COPIES OF YOUR MEDICAL FILE. YOU NEED TO FILE (SUBMIT) ANOTHER CSC GOS TO THE INSTITUTION APPEALS OFFICE ALONG WITH THE SUPPORTING DOCUMENTS WITH YOUR REQUEST. THE MEDICAL APPEALS PROCESS DOES NOT ALLOW AUTHORIZATION OF REMOVAL OF DOCUMENTS FROM THE CENTRAL FILE.

I FILED MY SECOND GOS ON 7/19/06 ASKING THAT THE 128-A BE REMOVED FROM MY C-FILE AND NOW MY COUNSELORS REPORT FOR MY PAROLE BOARD HEARING.

On July 24<sup>th</sup> 2006 MY 603 APPEAL WAS REJECTED. IT WAS STATED THAT THERE HAD BEEN TOO GREAT A TIME LAPSE BETWEEN WHEN THE ACTION OR DECISION OCCURRED.

ON JULY 24<sup>TH</sup> 2006 MY SECOND 602 WAS REJECTED. IT STATED THAT I HAD SUBMITTED AN APPEAL THAT DUPLICATES A PREVIOUS APPEAL UPON WHICH A DECISION HAS BEEN RENDERED OR IS PENDING.

WITH THIS SECOND 602 I WAS ONLY DOING WHAT I WAS TOLD TO DO TO MY FIRST 602.

ON 6/10/06 I SUBMITTED A LETTER TO THE APPEALS COORDINATOR ASKING FOR AN UPDATE ON MY ORIGINAL 602. ON 6/20/06 I RECEIVED MY LETTER BACK SAYING IT WAS (IT IS IN PROGRESS SIGNED: C. ZEWIGA 6/20/06).

ON 7/10/06 I SUBMITTED ANOTHER LETTER TO THE APPEALS COORDINATOR ASKING FOR AN UPDATE.

I DO NOT BELIEVE I WAS GIVEN A FAIR DUE PROCESS DECISION TO MY EFFORTS TO GET THIS 128 - A REMOVED FROM MY C FILE AND MY COUNSELOR'S PAROLE BOARD REPORT. THE DECISION THAT MY 602 WAS WELL BEYOND THE TIME LIMITS STATED HAVE BEEN MADE IMMEDIATELY AFTER I FILED MY 602 ON MAY THE 10<sup>TH</sup> 2006.

I BELIEVE MY LETTER OF JULY THE 5<sup>TH</sup> 2005 AND MY MEDICAL RECORDS OF JUNE THE 10<sup>TH</sup> 2005 SUPPORT THE FACTS THAT THERE WAS ABSOLUTELY NO WORKING ON MY PART WHEN I WAS AT THE DENTIST ON JUNE THE 1<sup>ST</sup> 2005.

I wish SAY AGAIN THAT I know THAT IGNORANCE OF THE LAW, AND THE RULES OF THAT TITLE 15 CONCERNING THE G.O.D. PROCESS IS NO EXCUSE. But I ALSO WANT TO SAY THAT IN MY 22<sup>1/2</sup> YEARS OF INCARCERATION I HAVE NEVER FILED A G.O.D. I ALSO WISH ADMIT THAT IF IT WASN'T FOR MY PSYCHOLOGIST I WOULD NOT HAVE FILED THIS ONE. I WOULD HAVE LET THIS 128-A GO AND SAT IN MY CELL AND COMING BOARD HEARING AND SUFFERED KNOWING THAT I RECEIVED THIS WHITE CELL AND I DIDN'T DO ANYTHING ABOUT IT. EVER THOUGH MY G.O.D HAS BEEN REJECTED, I HAVE DONE ALL I CAN DO.

I Respectfully Submit These Documents To You.

Clifford Baer C95079  
W.L. 3 346  
P.O. Box 600  
Tracy, California  
95378 0600

RICHARD RUSSEL / CHRISTEL ISLER  
APPEALS COORDINATOR  
DENTAL VOCATIONAL INSTITUTION

6/18/06

Re: CALIFORNIA BAIR C45079  
LOG NUMBER DUI-X-06-01264

ASSIGNED STAFF REVIEWER: HCM

APPEAL ISSUE: CASE ISSUE 128 - A REMOVAL/RECORDS  
DUE DATE 7/13/06

To Whom It May Concern,

I SUBMITTED MY SUPPORTING DOCUMENTS TO YOU ON 5/25/06 SHOWING THAT WITH THESE DOCUMENTS IT PROVES THAT I HAD A SERIOUS MEDICAL PROBLEM ON JUNE 1st 2005 WHEN I WAS AT THE DENTIST HERE AT DUI. THIS SEVERE MEDICAL CONDITION WAS LOCATED IN MY GROW AREA AS HAS BEEN SHOWN BY THE MEDICAL RECORDS I HAVE SUBMITTED.

I AM REQUESTING AN UP-DATE ON MY 602 SO THAT I CAN RESOLVE THIS ISSUE, OR PROCEED TO THE NEXT LEVEL.

It is in progress.

C. Zuniga 6/2006

I thank you

Cliff Bair  
h3 346

RICHARD RUSSELL / CHRISTEL ISLER  
APPEALS COORDINATOR  
DEMOVIC LOCALITIONAL INSTITUTION  
DVI TRACY, CALIFORNIA

7/10/06

Re: CLIFFORD BAIR C95079  
Log Number # DVI-X-06-01264

Assigned STAFF Reviewer: HCA

APPEALS ISSUE: 128-A Removed From Case Records  
And Counselors Board Report

To whom it may concern,

I submitted a G.O. on 5/10/06 to secure my medical records from June 18th 2005 that proves I had a severe medical condition in my bowel area. I received these records on 5/17/06 and submitted them to you on 5/25/06. I wrote to you asking for an update on my G.O. on 6/19/06 to get this 128-A removed from my C-File. My counselor MR. LARSON has now excluded this 128-A into my parole Board Report.

My last response was from MR. ZWISCH CCI on 6/20/06 stating (IT IS IN PROGRESS).

I do not know what it is in progress means, so I am re-questioning another update, so that I can resolve this issue.

I thank you

Cliff Bair C95079

CLIFF BAIR C95079

L3 346

P.O. Box 600

TRACY, CALIFORNIA 95378-0600

MY RESPONSE TO THE CDC 128-A THAT I RECEIVED  
ON APPROXIMATELY JULY THE 5TH 2005.

ON MAY THE 27TH OR 28TH I CAME DOWN WITH A SEVER  
MEDICAL CONDITION IN MY GROIN AREA AND ON THE BIGGER SIDE  
OF MY THIGH AREA. THIS CONDITION WAS SO BAD THAT I IN FACT  
HAD BLISTERs ON THE SIDE OF MY LEG AND ON MY GROIN AREA.

ON THE 28TH I RAN TO A MEDICAL BLD TO SEE THE DOCTOR  
ABOUT GETTING SOME MEDICAL ATTENTION FOR THIS PROBLEM THAT  
WAS CAUSING ME A GREAT DEAL OF PAIN AND DISCOMFORT.

ON WEDNESDAY JUNE THE 1ST 2005 I WENT TO MY DENTAL  
APPOINTMENT. I WAS IN A GREAT DEAL OF PAIN, AND WEARING A PAIR  
OF PANTS THAT WERE TOO TIGHT DID NOT HELP MY PROBLEM. WHEN I  
WAS SEATED IN THE DENTAL CHAIR MY CONDITION BECAME UNBEARABLE  
I WAITED FOR DOCTOR DIETH TO GET DONE TALKING TO ME AND WHEN  
SHE STEPPED OUT OF MY LINE OF SIGHT I REACHED INTO MY PANTS AND  
ADJUSTED MY GROIN AREA TO WHERE I WASN'T SUFFERING SO MUCH  
PAIN. MY GROIN AREA WAS WET FROM THE BLISTERs THAT HAD BROKEN

THE 128-A WHILE IT IS THIS

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS CDC 128-A  
BAIR C95079 L346 ON WEDNESDAY JUNE 01, 2005 AT APPROXIMATELY  
0830 HOURS IN MATE BAIR C95079 HOUSED IN L346 WAS SEATED  
IN THE DENTAL CHAIR FOR A SCHEDULED APPOINTMENT TO THE  
MAINLINE DENTAL CLINIC

128-A Write up Continued

During the Appointment I observed him <sup>o</sup>crossing his private area. This was observed by the Dental Assistant <sup>o</sup>Asmine Rhodes RDA who was present during the appointment. I told him to stop and that <sup>o</sup>his behavior were observed again he would be dismissed immediately from the dental clinic.

ORG: C-FILE CC: Counselor INMATE: 6-1-65 3005(a) Behavior  
 3004(b) INMATES respect towards STAFF 128-A Counselor  
 CERANO DUT DENTL, R, Dentist Dentist Mainline Office and  
 Watch.

I moved my hands and Doctor Dietl pulled 3 of my upper teeth. I apologized and the Doctor said she had forgiven me. Up until I received this 128-A I thought this little misunderstanding was over with.

On approximately June the 3rd I was able to see Doctor Michael Fox concerning my medical problem. After Doctor Fox examined me, he gave me a prescription of MIRENAZOLE NITRATE that has my condition under control.

I would like to apologize to Doctor Dietl and apologize to Ms. Rhodes for any embarrassment that my actions have caused them.

ORG - Counselor - C FILE

Dr. Dietl

Ms. Rhodes

Mrs. Bair

In Sincerely, Sonny  
 Cliff Bair  
 July 5th 2005  
 49

**INMATE APPEAL ASSIGNMENT NOTICE**

To: INMATE BAIR, C95079  
Current Housing: WLT300000000046U

Date: May 31, 2006

From: INMATE APPEALS OFFICE

Re: APPEAL LOG NUMBER: DVI-X-01264

ASSIGNED STAFF REVIEWER: HCM  
APPEAL ISSUE: CASE INFO./RECORDS  
DUE DATE: 07/13/2006

Inmate BAIR, this acts as a notice to you that your appeal has been sent to the above staff for FIRST level response. If you have any questions, contact the above staff member. If dissatisfied, you have 15 days from the receipt of the response to forward your appeal for SECOND level review.

Richard Russell/Christel Isler  
Appeals Coordinator  
Deuel Vocational Institution

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**INMATE/PAROLEE  
APPEAL FORM**  
 CDC 802 (12/87)

Location: Institution/Parole Region

Log No.

1. DVI

1. 06-01264

Category

2. \_\_\_\_\_

2. \_\_\_\_\_

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME <i>Clifford Bain</i>	NUMBER <i>C95079</i>	ASSIGNMENT <i>P.I.A. Warehouse</i>	UNIT/ROOM NUMBER <i>63 346</i>
------------------------------	-------------------------	---------------------------------------	-----------------------------------

A. Describe Problem: *On June 1st 2005 I was written a 128-A Counseling Citation Here At DVI. I received this Citation on July 5th 2005. On July 5th 2005 I wrote a note to Ms. Drell and Ms. Brooks, to my counselor and my wife, explaining the entire situation to them. On 4/23/06 I sent an inmate request to medical records to obtain a copy of my doctors visit on July 3rd to prove my medical condition on June the 1st 2005. I have been advised to box this entire matter.*

If you need more space, attach one additional sheet.

B. Action Requested: *I want a copy of my medical records as of July 1st through July 5th 2005 that will prove that I was seen by Doctor Fox and that he wrote me a prescription for my medical condition in my group area. I want this 128-A removed from my records*

Inmate/Parolee Signature: *Clifford Bain* Date Submitted: *5/10/06*

C. INFORMAL LEVEL (Date Received: *6/5/06*)

Staff Response: *Partially granted. Appropriate medical staff have been notified and the requested copies will be forwarded to you at the earliest convenience. Medical staff do not have the authority to remove documents from your file.*

Staff Signature: *Rene Rodriguez* Date Received: *6/5/06* Date Returned to Inmate: *5/18/06*

**D. FORMAL LEVEL**

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response. *3 PAGES*

*Sir I am respectfully submitting a copy of my doctors appointment with Dr. Fox on June 1st 2005 and the copy of the prescription that he ordered for me for my group. Infection. With this evidence I am asking that this 128-A be removed from my file.*

Signature: *Clifford Bain*

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BOC-1E, Inmate Claim

MAY 17 2006

RECEIVED
----------

Date Submitted: *5/25/06*

CDC Appeal Number:

CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the SECOND Level

July 24, 2006

**BAIR, C95079**

WLT300000000046U

Log Number: DVI-X-06-01264

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

*There has been too great a TIME LAPSE between when the action or decision occurred and when you filed your appeal with no explanation of why you did not or could not file in a timely fashion. Time limits expired per CCR 3084.6(c). Therefore, if you would like to pursue this matter further, you must submit an explanation and supporting documentation explaining why you did not or could not file your appeal timely.*

*After reviewing this appeal again, it should not have been processed originally in May of 2006. The date of action or the date or the chrono is 06-01-05. Well beyond time constraints. Appeal Rejected.*

Richard Russell/Christel Isler  
Appeals Coordinator  
Deuel Vocational Institution

*At E. Reviewers Action - DATED 7/1/06 AND 7/13/06*

*PAUL HAYTER, OFFICE ASSISTANT MEDICAL RECORDS YOU WERE PROVIDED DESIRED COPIES OF YOUR MEDICAL FILE. THE MEDICAL APPEALS PROCESS DOES NOT ALLOW AUTHORIZATION OF REMOVAL OF DOCUMENTS FROM CENTRAL FILE. YOU NEED TO SUBMIT ANOTHER CDC 602 TO THE INSTITUTION APPEALS OFFICE ALONG WITH SUPPORTING DOCUMENTS WITH YOUR REQUEST*

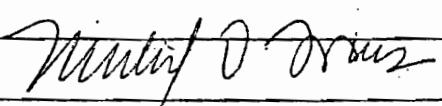
*SHAW IT 07/10/06  
HEM IT 07/13/06*

*I DID ON 7/18/06*

**NOTE**

Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

**PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE**

DATE	TIME	PROBLEM #
6/10/03		<p>⑤ Itch to groin region  <del>0600 18</del> ⑥ <del>0600</del> ⑦ 20 ⑧ 26  <del>A 1000</del>  ⑨ Rxed to u1 Eclat</p>
<p>⑤ Immune menitis and redness, not c    uticling to groin &amp; scrotal area - Phentol    amine S/25% n S/2%. Very tend to    scrotal area.</p> <p>⑥ Erythema to groin, scrotal area    intertrigois folds fat my.</p> <p>⑦ Tinea cruris - vs dermatitis</p> <p>⑧ 2% miconazole cream - Apply to gro    and scrotal area BID -    If it is 2 wks of symptoms are    unrelieved.</p>		
		
INSTITUTION	DET	ROOM / WING

CDC NUMBER, NAME (LAST, FIRST, MD)

OUTPATIENT INTERDISCIPLINARY  
PROGRESS NOTESBANIR, CHH  
C-95079

PAGE 2

NOTE: SEND COPY OF PHYSICIAN'S ORDER FOR MEDICATION  
TO PHARMACY AFTER EACH ORDER IS SIGNED.

Order Date	Time	Problem #	Physician's Order and Medication (Orders must be dated, timed, and signed.)
6-10-05	NOON		
<p><u>Prescription</u> - 2% micromyxle cream -  <u>8g</u>: Apply to affected area BID x 14 days</p>			
<p><u>Signature</u> <u>Marilyn O. DDXW</u></p>			
<p><u>CORRECT PAGE 3 SAYS AS RECORDED BY RN/M MACLATT/CHIASC</u>  <u>10/07/06</u> <u>NURSE PRACTITIONER</u></p>			
<p>S Itch To Groin Region      O 3P 118/63 P 61 Bed 20 Team 97.6      A <u>Infection</u>      P <u>Referral To MD</u></p>			
<p><u>Symptoms</u> S INMATE PRESENTS SEVERE REDNESS, BASH ITCHING      TO GROIN AREA AND SCROTAL AREA. PRESENT SINCE      5/28 5/29 VERY TENDER TO SCROTAL AREA</p>			
<p><u>Examination</u> O Redness to Groin &amp; Scrotal Area AND COXOTCH      AREA</p>			
<p><u>Assessment</u> A FERAL INFECTION TO GROIN WITH BLISTERS AND      DRY SKIN</p>			
<p><u>Treatment</u> P CREAM TO SCROTAL AREA / <u>Recess 1-2 weeks</u>      INSTITUTION: <u>DVI</u> ROOM/WING: <u></u></p>			
ALLERGIES:		CDC NUMBER, NAME (LAST, FIRST, MI)	

Confidential  
client information  
See W & I Code, Sections 4514 and  
5328

CDC NUMBER, NAME (LAST, FIRST, MI)

Bair, Cliff L.  
C 95079

PHYSICIAN'S ORDERS

NOTE: SEND COPY OF PHYSICIAN'S ORDER FOR MEDICATION TO PHARMACY AFTER EACH ORDER IS SIGNED.

ALLERGIES:

## INSTITUTION

**ROOM/WING**

Confidential  
client information  
See W & I Code, Sections 4514 and  
5328

**CDC NUMBER, NAME (LAST, FIRST, MI)**

Bair, Cliff L.  
C 915079

## PHYSICIAN'S ORDERS

## \*\*\* PATIENT PROFILE \*\*\*

Includes All Prescriptions

Discontinued Drugs Are Marked with \*

\*\*\*\*\*
 C-95079, BAIR, CLIFF CURRENT UNIT: WL3-046U  
 ALLERGIES: DOB: / / HT: ft in WT: 0  
 =====  
 START Rx/Qty DRUG PHYSICIAN STOP  
 =====  
 03/11/2005 975718 TERAZOSIN 5MG UD\* FOX, MICHAEL D. \*04/07/2005  
 ES 56 TAKE 2 CAPS EVERY MORNING WC2-003U  
 =====  
 04/07/2005 983530 TERAZOSIN 5MG UD\* FOX, MICHAEL D. \*05/04/2005  
 MP 56 TAKE 2 CAPS EVERY MORNING WL3-046U  
 =====  
 05/18/2005 996438 HYDROCODONE 5/ACETAMINOPH\* NEWMAN, HARRY \*05/19/2005  
 MP 2 TAKE 2 TABLETS NOW WL3-046U  
 =====  
 05/18/2005 996439 HYDROCODONE 5/ACETAMINOPH\* NEWMAN, HARRY \*05/25/2005  
 MP 28 TAKE 2 TABS 2 TIMES DAILY =====7AM=====5PM=====WL3-046U  
 =====  
 05/23/2005 998202 TERAZOSIN 5MG UD\* FOX, MICHAEL D. \*05/24/2005  
 MP 56 TAKE 2 CAPS EVERY MORNING WL3-046U  
 =====  
 05/24/2005 998222 TERAZOSIN 5MG UD\* FOX, MICHAEL D. \*06/20/2005  
 MP 28 TAKE 1 CAPSULE DAILY IN THE MORNING 28 DAY SUPPLY WL3-046U  
 =====  
 06/10/2005 4335 MICONAZOLE 2% CREAM\* FOX, MICHAEL D. \*06/24/2005  
 MP 1 APPLY LIGHTLY 2 TIMES A DAY WL3-046U  
 =====  
 06/20/2005 7229 TERAZOSIN 5MG UD\* FOX, MICHAEL D. \*07/18/2005  
 MP 28 TAKE 1 CAPSULE DAILY IN THE MORNING 28 DAY SUPPLY WL3-046U  
 =====  
 07/18/2005 7229 TERAZOSIN 5MG UD\* FOX, MICHAEL D. \*07/25/2005  
 ESA 28 TAKE 1 CAPSULE DAILY IN THE MORNING 28 DAY SUPPLY WL3-046U  
 =====  
 07/25/2005 18175 TERAZOSIN 5MG UD\* NEWMAN, HARRY \*08/10/2005  
 MP 56 TAKE 2 CAPS AT BEDTIME 28 DAY SUPPLY WL3-046U  
 =====  
 08/05/2005 22695 ACETAMINOPHEN 325MG #50\* NEWMAN, HARRY \*08/10/2005  
 KVA 50 TAKE 2 TABS 3 TIMES DAILY RFX2 WL3-046U  
 =====  
 08/25/2005 29349 TERAZOSIN 5MG UD\* NEWMAN, HARRY \*09/22/2005  
 ERS 56 TAKE 2 CAPS AT BEDTIME 28 DAY SUPPLY WL3-046U  
 =====  
 09/09/2005 34140 IBUPROFEN 600MG UD\* FOX, MICHAEL D. \*09/22/2005  
 ERS 42 TAKE 1 TAB 3 TIMES DAILY REFILLX3 WL3-046U  
 =====  
 09/22/2005 34140 IBUPROFEN 600MG UD\* FOX, MICHAEL D. \*10/12/2005  
 KVA 42 TAKE 1 TAB 3 TIMES DAILY REFILLX2 WL3-046U  
 =====  
 09/29/2005 40694 TERAZOSIN 5MG UD\* FOX, MICHAEL D. \*10/27/2005  
 ERS 56 TAKE 2 CAPS AT BEDTIME 28 DAY SUPPLY WL3-046U
 \*\*\*\*\*

CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the INFORMAL Level

July 24, 2006

**BAIR, C95079**

WLT300000000046U

Log Number: DVI-X-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

***You have submitted an appeal that duplicates a previous appeal upon which a decision has been rendered or is pending (CCR 3084.3(c)(2)).***

***Duplicate to 06-1264.***

Richard Russell/Christel Isler  
Appeals Coordinator  
Deuel Vocational Institution

*This is the 602 that I filed as to E. Reviewed  
Action dated 7/01/06 and 7/03/06*

***NOTE***

Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

**PERMANENT APPEAL ATTACHMENT – DO NOT REMOVE**

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**INMATE/PAROLEE  
APPEAL FORM**  
 CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

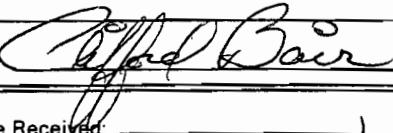
You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Clifford Bair	C95079	P.I.A. Warehouse	L3 346

A. Describe Problem: *As per Reviewers Actions At (E.) on 602 DATED 7/11/06. I AM SUBMITTING ANOTHER 602 AND ACCOMPANYING DOCUMENTS THAT PROVE I HAD A SEVERE MEDICAL CONDITION IN MY GROIN AREA ON JUNE 1st 2005 WHEN I WAS IN THE DENTAL CHAIR HERE AT D.U.I. THESE DOCUMENTS ARE THE LETTER I WROTE TO MS. DIEHL - MS. RHOADES - MS. BAIRD - COUNSELOR C-FILE. THE 602 5/10/06. THE MEDICAL RECORDS FROM MY DOCTORS APPOINTMENT WITH DOCTOR FOX THAT PROVE MY MEDICAL CONDITION. THE NOTICE FROM THE APPEALS COORDINATOR THAT MY 602 WAS ON FILE 5/31/06*  
 If you need more space, attach one additional sheet. COPY OF 128-A

B. Action Requested: *IS THAT THE 128-A I RECEIVED BE REMOVED FROM MY C-FILE AND MY COUNSELOR'S REPORT FOR MY PAROLE BOARD.*

Inmate/Parolee Signature:



Date Submitted:

7/19/06

C. INFORMAL LEVEL (Date Received: \_\_\_\_\_)

Staff Response: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Staff Signature: \_\_\_\_\_ Date Returned to Inmate: \_\_\_\_\_

## D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

Note: Property/Funds appeals must be accompanied by a completed

Board of Control form BC TE, Inmate Claim

CDC Appeal Number: \_\_\_\_\_



58

# DVI INMATE REQUEST

From: Clifford Bair # C 25079 Housed: 13 346 Dated: 7/31/06

Assignment: P.F.A. Warehouse To: MR C. Lewis CC II

Briefly state your problem: (See reverse side for mailing instructions)

I LOST MY BATTLE  
WITH THE 602 PROCESS TO GET A 128-A REMOVED FROM MY C-  
FILE AND MY COUNSELORS BOARD REPORT. THE SECOND LEVEL  
DECISION WAS I WAITED TO LONG TO FILE MY 602. I HAVE BEEN  
IN PRISON FOR 22 1/2 YEARS AND UNTIL THIS 602 I HAVE NEVER FILED ONE  
I WOULD LIKE TO TALK TO YOU AND SEE IF THERE IS ANYTHING ELSE I CAN  
DO TO TAKE CARE OF THIS MATTER.

Response from Staff: \_\_\_\_\_

I Thank You  
Clifford Bair

NO Response As Of 8/7/06

Signed: \_\_\_\_\_  
Cus#03.doc

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Rev.12/03

**Life Prisoners in California have a Constitutionally Protected Substantive Due Process right to a Fair and Impartial Parole Suitability Hearing and Decision**

Though "there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence"...the mandatory language of a state's statutory scheme "creates a presumption that parole release will be granted" unless certain enumerated findings are made, thereby giving rise to a constitutional liberty interest. *Id.* at 12; Board of Pardons v Allen, 482 U.S. 369,377-78. (1987). The California parole scheme is virtually identical to the Nebraska one in Greenholtz and the Montana one in Allen. In both of these cases the United States Supreme Court held the statutes created a protected liberty interest,

, the Parole Board, although vested with significant discretion, is instructed by statute and/or regulation that it "shall" set a parole date "unless" limited circumstances exist.

Longstanding and clearly established United States Supreme Court precedent governs the instant case. Greenholtz v Inmates of Nebraska Penal, 442 U.S. 1; 60 L.Ed.2d 668,99 S.Ct. 2100 (1979), and Board of Pardons v Allen, 482 U.S. 369,96 L.Ed.2d 303,107 S.Ct. 2415 (1987). Such a precedent has resulted in both federal and California state courts expressly recognizing that California life prisoners have a protected liberty interest in parole release pursuant to the Fourteenth Amendment's Due Process Clause. McQuillion v Duncan, 306 F.3d. 895,902 (9th Cir. 2002) ("Under the clearly established framework of Greenholtz and Allen we hold that California's parole scheme gives rise to a cognizable liberty interest in release on parole.")(internal quotations omitted); Biggs v Terhune, 334 F.3d.910,914-15 (9th Cir. 2003)(recognizing due process liberty interest in context of parole suitability decision); Caswell v Calderon, 363 F.3d. 832,838 (9th Cir. 2004)(recognizing due process liberty interest in context of challenge to parole suitability rescission decision see also In re Rosenkrantz, 29 Cal.4th 616,657 (Ca. 2002) (recognizing judicial review using a "some evidence" test required to prevent Board decisions that are "arbitrary and

capricious, thereby depriving the prisoner of due process of law.)<sup>1</sup>; In re Scott, 119 Cal. App.4th 871,(Ca. App. 2004) (granting habeas relief after concluding the Board failed to consider substantial evidence showing suitability for release) petition for review denied, 2004 Cal. LEXUS 9695, 2004 D.A.R. 12607 (Cal. Oct.13, 2004)(unpublished). This clause applies when government action deprives a person of liberty or property. Greenholtz, 442 at 7. A person must have, not only a unilateral expectation, but a publicly recognized claim of entitlement to, the right at issue. Board of Regents v Roth, 208 U.S. 564,570-71, (1972).

In California, the initial parole suitability hearing is scheduled a year before the prisoner's minimum eligible parole release date.<sup>2</sup> Cal. Pen. Code 3041(a). The statute provides that the Board "shall normally set a parole release date" at the initial suitability hearing. Id. Penal Code Section 3041(b) provides the standard for setting parole release dates:

The panel or board "shall" set a release date "unless" it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting.

Emphasis added; see also 15 CCR 2280 et seq. and 2400 et seq. Thus, there can be no question that the California parole scheme creates a protected liberty interest for prisoners.<sup>3</sup>

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<sup>1</sup> The California Supreme Court Rosenkrantz decision was specifically based on the Due Process protections afforded by the state constitution. The scope of California's procedural Due Process protections are arguably broader than federal protections in that California has rejected the notion that a statute-created right must be sufficiently compelling to have created a "liberty interest." See People v Ramirez, 25 Cal.3d 260(Ca. 1979). As for substantive Due Process analysis, the federal constitution's Due Process guarantee is at least as protective as California's constitution. See e.g. Hubbard v Superior Court, 19 Ca.4th 1138 1151 n. 19.

State law requires that the Board "shall" find a prisoner suitable for parole and set a release date "unless" the reliable evidence in the record shows that his/her release would pose a risk to public safety. As in Greenholtz, the California statutory scheme creates a statutory expectation of parole "absent the requisite finding that one of the justifications for deferral exists". Greenholtz at 12-15. Therefore, some evidence is required to show that the prisoner is a current danger to the community.

#### What Due Process Requires

The core issue here is petitioner's substantive Due Process rights, including the right to have his parole suitability determined based on rational and nonarbitrary reasons that are supported by reliable evidence. Though Dannenberg held that an individual inmates suitability for parole under Penal Code 3041(b) must precede any effort to set a parole release date under the uniform provisions of 3041(a), the court confirmed that an inmate MUST be found suitable for release unless the Board properly finds that the inmate presents a public safety danger. Dannenberg at 1079-80;1082-83. Such a finding by the Board must be based on "some evidence", which must be beyond that which is minimally necessary to convict a person of the offense for which he is confined. Id. at pg. 1095. see also In re Rosenkrantz, 29 Cal.4th 616,683 (2002).

In Hill, the court applied a "some evidence" test to review whether there were sufficient protections in the circumstance of prison disciplinary action that resulted in the loss of good time credits, so as not to violate Due Process. Holding that "

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2 Much earlier, the Board is obligated to meet with the prisoner to review his/her central file, to make recommendations, and to document activities and conduct pertinent to granting or withholding post-conviction credit. This meeting must take place during the ~~third~~ <sup>year</sup> of incarceration. Pen. Code 3041(a).

3 The California Supreme Court has repeatedly held that the state parole scheme creates a protected liberty interest for prisoners. See e.g. In re Prewitt, 8 Cal.3d 470 (Ca.1973) In re Strum, 11 Cal.3d 258 (Ca. 1974).

"good time credits constitute a protected liberty interest, a decision to revoke such credits must be supported by some evidence". Superintendent v Hill, 472 U.S. 445, 447, 86 L.Ed. 356, 357 (1985). The Court went on to state that only a modicum of evidence is required to revoke credits and that the "relevant question is whether there is any evidence in the record that could support the conclusion..." Id. at 455-56. Declining to adopt a more stringent standard, the court recognized the unique circumstance of disciplinary proceedings which "take place in a highly charged atmosphere [with] prison administrators [acting] swiftly on the basis of evidence that might be insufficient in less exigent circumstances. Id. at 456. The Court went further to distinguish the evidence required to support a prison disciplinary proceeding and a criminal conviction, indicating the amount of evidence necessary to support a criminal conviction or anything greater than some evidence applies in the context of prison disciplinary proceedings. Id. at 457. Therefore given that the liberty interest in a parole release date is significantly greater than lost good-time credits, the standard of "some evidence" required in Hill is insufficient to ensure Due Process protections for a life prisoner's release on parole.

Because the "some evidence" test applied in Hill related to the unique circumstance of prison discipline it cannot be said to be appropriate or applicable in a parole setting. Id., see Biggs, 334F.3d at 915; McQuillion, 306F.3d at 904; Jancsek v Oregon Board of Parole, 833 F.2d 1389-90 (9th Cir. 1987)<sup>4</sup> Rather, "consideration of what procedures Due Process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action". Cafeteria Workers v McElroy, 367 U.S. 886, 895 (1961). Therefore, Due Process requirements are flexible and depend upon

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<sup>4</sup> The Ninth Circuit's application of the Hill standard to parole setting decisions can be traced back to Jancsek. The entire discussion in Jancsek of the standard of evidence necessary for a parole decision is one paragraph with only a single sentence as to why Hill would be applicable to parole matters; "Though the liberty interest at stake there [in Hill] surrounded the

a balancing of private interests and governmental action. Id.

In the instant case, if petitioner is to be found "not suitable" for parole release, such a finding must be supported by sufficient evidence and rational, nonarbitrary reasoning. However the Supreme Court has never specifically addressed the issue of the quantum of evidence required by Due Process to justify parole denial. Therefore, the requirements of Due Process are flexible and depend on a balancing of the interests affected by the relevant government action. See, e.g., Cafeteria Workers v McElroy, supra.

Here, in the context of setting a parole release date for a life prisoner, the Due Process requirements call for more than "some evidence" for a number of reasons. First, the prisoner's interest in parole release is significantly greater. The unique circumstance of Hill involved the loss of some days of good time credits. Importantly, the maximum days a California prisoner stands to lose for a serious disciplinary violation is 360 days 15 CCR 3323. In the parole setting context, on the other hand, the issue is whether a person will ever gain his liberty. A finding of parole unsuitability, not only indefinitely delays a person's release from prison, it specifically finds that the person is a danger to the community. Such a finding makes it less likely that he/she will be found suitable in the future. Additionally, a finding of unsuitability results in a denial of parole for a period of time from one to five years, thereby heightening the interest of the prisoner. Finally, because California prisoners are commonly denied parole based upon the

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accumulation of good-time credits, rather than the parole decision which is at issue here, both directly affect the duration of the prisoner's term." 833 F.2d at 1390.  
 5 Petitioner has been denied parole at each of his 3 parole suitability hearings because of his commitment offense.  
 6 There is no question that Due Process requires good cause for the Board to find a prisoner unsuitable for parole. The Board's governing regulations define good cause as "a finding by the Board based upon a preponderance of the evidence that there is

unchanging factors of their commitment offense<sup>5</sup>, a finding of unsuitability based upon that factor can result in a justification of parole denial for years to come.

Additionally, the interest of the Board in proceeding with a parole suitability hearing with fewer or diminished Due Process protections is less than the interest of the prison in disciplinary proceedings. The Board has no need to act swiftly. The atmosphere is not like the charged prison atmosphere in Hill where there are institutional safety needs and exigent circumstances that justify swift action. In the context of a parole hearing, the Board has no legitimate interest served by the reduced evidence requirement applicable in a disciplinary hearing. Rather, the Board has a heightened administrative burden for parole hearings, justifying heightened Due Process requirements for those hearings. In fact, under California law, the Board is required to provide substantial administrative requirements as mandated in Morrisey v Brewer, 408 U.S. 471 (1972).

Given the considerations of a prisoner's enhanced interest and the Board's decreased interest, it is evident that the Due Process analysis weighs in favor of a quantum of evidence above the "some evidence" standard for prison disciplinary proceedings. Since a life prisoner's liberty has already been stripped by virtue of a judgment with the highest procedural protections, including an evidentiary requirement of proof beyond a reasonable doubt, and because the Board's determination of whether a parole date should be set involves considerations regarding the prisoner's potential danger to the community, a greater than some evidence standard is required. Importantly, the petitioner does not compel the court to apply a quantum of evidence as high as "beyond a reasonable doubt". However, because there is no justification for a standard as low as "some evidence", the standard for parole, rescission or failure to grant a parole date should be some amount more. Therefore, the proper standard for parole

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a factual basis and good reason for the decision. 15 CCR 2000(b)(50). Thus, the Board's own rules require more than the "some evidence" standard of Hill.

denial should be at least substantial evidence, that is, evidence sufficient to convince a reasonable person<sup>6</sup>. Moreover, even under the "some evidence" standard, that evidence used to justify parole denial must bear "some indicia of reliability". Biggs, 334 F.3d at 915; McQuillion, 306 F.3d at 904.

Importantly, though respondent in Rosenkrantz argued that McQuillion is no longer good law, the court determined the review of McQuillion only addressed a portion of the relevant statute, namely, PC 3041(a) and not the entire parole statute... Further in Dannenberg, the California Supreme Court held that the Board need not engage in a "uniform analysis" under PC 3041(a) if they determine denial is warranted by public safety concerns under PC 3041(b). Dannenberg, 34 Cal.4th at 1092-94, 23 Cal.Rptr.3d 415, 104 P.3d 783. In making this decision, the court did not determine there is no liberty interest in parole. Rather, they determined the Board, under some circumstances, is not required to compare one life prisoner's to another who has been convicted of similar crimes. Dannenberg, 23 Cal.4th at 1098 n. 18. Therefore, the holding in McQuillion, "that the mandatory language of PC 3041(b) creates a liberty interest in parole remains controlling precedent. Rosenkrantz II, 444 F.Supp. 2d at 1078.

Ultimately, this court may not need to determine the quantum of evidence necessary to find a life prisoner in California unsuitable for parole. Here, even under the very low "some evidence" standard, there is insufficient evidence to find petitioner unsuitable for parole. In fact, there is no evidence in the record that he poses any degree of threat to the community. In fact, the evidence in the record supports the opposite conclusion, that petitioner's violence potential is definitely extremely low, if not nil.

Justifying Petitioner's Parole Denial because the District Attorney opposed release is an Improper application of the law and violated Petitioner's Substantive Due Process right to a fair and Impartial Suitability Hearing and Decision

The regulations and/or statute governing parole in California do not include any mention of District Attorney support

required for a finding of suitability. The relevant section states in part,

...the board shall send written notice [of the hearing] to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted. the attorney who represented the defendant at trial, the district attorney of the county in which the offense was committed...

PC 3042. Specifically, that section requires the Board to "review and consider all information received from the judge or any other person and shall consider adjusting the terms or conditions of parole to reflect the comments or concerns raised by this information, as appropriate. PC 3042(f)(3). This opposition indicates nothing about petitioner's institutional behavior or the commitment offense that was not previously addressed in the record and ultimately holds him to a term of life in prison based on the commitment offense.

Finally, just as the repeated denial of parole by the Board based upon the unchanging factors of the commitment offense is a violation of Due Process, such denial masked in terms of District Attorney opposition based on the commitment offense is a violation as well. Ultimately, "both the District Attorney... opposed parole based solely upon their view of the gravity of the offense, so their oppositions are merely cumulative of the BPH's own determination regarding the callousness of the crime."

Rosenkrantz II 444 F.Supp.2d at 1080 fn 14. Such cumulative evidence, at some point, becomes irrelevant. Blanket opposition towards a prisoner whenever he goes before the Board, or a statement that does not take into account the individual factors of the case, is irrelevant and should not be used by the Board to justify a parole denial. Reliance on such opposition is "arbitrary". The relevant factors set forth by regulation that the Board is required to consider when making a determination of parole suitability set forth in the CCR Title 15 2402. This section of four subdivisions: Subdivisions (a) reiterates the statutory public safety factor, stating that [r]egardless of the

length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison. 15 CCR 2402(a). Subdivision (b) provides that:

[a]ll relevant reliable information...shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.

15 CCR 2402(b).

The criteria set forth by the Board to determine current dangerousness is outlined in the regulations. 15 CCR 2280 et seq and 2400 et seq. These regulations list circumstances tending to show suitability and unsuitability.

The circumstances tending to show unsuitability, indicating that the prisoner poses a current danger to the community are:

1. **Commitment offense** was "especially heinous, atrocious and cruel," such that it involved multiple victims, was carried out in a dispassionate or calculated manner (such as an execution-style murder), the victim was abused, defiled, or mutilated, showed an "exceptional callous disregard for human suffering," or involved an inexplicable or very trivial motive";
2. **Previous record of violence** showing that the prisoner has on previous occasions inflicted or attempted to inflict serious injury;
3. **Unstable social history** showing that the prisoner has a history of tumultuous relationships with others;
4. **Sadistic sexual offenses** have been committed by the
5. **Psychological factors** shows a lengthy history of severe mental problems related to the offense; and
6. **Institutional behavior** shows that the prisoner is engaged

in serious misconduct in prison.

15 CCR 2281(c), 2402(c).

The circumstances tending to show **suitability**, that the prisoner does not pose a current danger to the community are: (See Exhibits A,B,C,D,E,F,G,& H)

1. **No juvenile record** of assaulting others or committing offenses with a potential of harm to the victim;
2. **Stable social history** showing reasonably stable relationships with others;
3. **Signs of remorse** showing that the prisoner is remorseful, such as attempting to repair damage or indicate understanding of the nature and magnitude of the offense.
4. **Motivation for the crime** was the result of significant stress, especially if the stress had built over a long period of time;
5. **Battered woman syndrome** indicating the offense was the result of this type of victimization;
6. **Lack of criminal history** showing that the prisoner lacks "any significant history of violent crime";
7. **Age** such that the prisoner's probability of recidivism is reduced;
8. **Plans for the future** that are realistic or depend on marketable skill; and
9. **Institutional activities** that show an enhanced ability to function within the law upon release.

CCR 2281(d), 2402(d).

Petitioner's rights to Due Process of Law were and continue to be violated by the Board's decisions to find him Not suitable for Parole.

There is no evidence in the record of the 2007 hearing to support denial of parole and no reason cited by the Panel to deny parole, bears a rational nexus to the conclusion that petitioner poses an unreasonable risk of danger to the public if released.

As is evident from the information provided above, petitioner does not pose a risk to the public if released from prison. Moreover, he is not the same person now as he was when he committed the life offense. To the contrary, all evidence in the record viewed by the Board shows that petitioner is currently and immediately suitable for parole and has been so for many years.

Petitioner submits to this honorable court that there was no evidence produced by the Commissioners at his March 30, 2007 Parole Board hearing to prove that he is a threat to public safety, or that he is a risk to society if released on parole.

Petitioner is providing this honorable court with the evidence to prove that he is suitable to be released on parole according to the CCR Title 15 2402(d).

1. Petitioner has no juvenile record
2. Petitioner has a stable social history  
He has been married since 8-10-02  
See Exhibit (A) for parole plans  
See Exhibit (C) for support letters
3. Signs of remorse ( Why did this crime happen Exhibit A)  
See Exhibit (G) for letters to victims and the D.A. 's letter  
See Exhibit (H) for remorse in mental health evaluations
4. Motivation for the crime  
See Exhibit (A) for why did Mrs Aikens die and why was Miss Fomasi traumatized.  
See Exhibit (H) for 10 years of marital stress  
See Exhibit (A) cause of the crime for 25 plus years of alcohol and drug abuse.  
See Exhibit (D) certificates and self-help chronos
5. Battered Woman Syndrome N/A
6. Lack of criminal history See Exhibit (F)  
Petitioner lacks any history of violent crime
7. Age  
Petitioners present age of 62 reduces the probability of recividism.  
See Exhibit (H) for birth certificate
8. Understanding and plans for the future  
Petitioner has made realistic plans for release  
See Exhibit (A) for parole plans for 3 counties as requested by petitioner's 2003 Parole Board panel.  
See Exhibit (B) for job offers  
See Exhibit (C) for support letters  
See Exhibit (H) for all mental health evaluations
9. Institutional Behavior  
Institutional activities indicate an enhanced ability to function within the law upon release.  
See Exhibit (D) for certificates and self-help chronos  
See Exhibit (F) for disciplinary history  
See Exhibit (H) for mental health evaluations

Petitioner submits to this honorable court that he meets all of the CCR Title 15 2402(d) requirements to be found suitable for his parole release date.

Petitioner contends that none of the above information was taken seriously in considering petitioner for his release date. Petitioner submits to this honorable court that if all of the CCR Title 15 2402(d) #1 through #9, plus petitioners exhibits A through H would have been given any consideration, petitioner would have received his legal and just release date.

The Board's previous decisions, including the 2007 decision, to find petitioner poses an unreasonable risk of danger to the public are not based in any facts before the Board. Instead this "finding" simply masks the Board's determination that petitioner must remain in prison indefinitely. Such a "finding" resulting in additional years in prison is of great concern and violates state law, basic constitutional principles and should not currently be considered in determining petitioner's suitability. The Board has consistently used the commitment offense to justify petitioner's continued parole denial. Each of the Panels, essentially, determined that the commitment offense was "carried out in an especially cruel and callous manner. The offense was carried out in a dispassionate and calculated manner. This was a senseless crime. The offense was carried out in a manner that demonstrates a callous disregard for another human being. The motive for the crime was inexplicable.

In Biggs, the Court determined that they must consider the Board decision-making process with respect to a person in prison over time:

The Parole Board's decision is one of "equity" and requires a careful balancing and assessment of the factors considered. As in the present instance, the Parole board's sole supportable reliance on the gravity of the offense and conduct prior to imprisonment to justify denial of parole can be initially justified as fulfilling the requirements set forth by state law. Over time, however, should [the prisoner] continue to demonstrate exemplary behavior and evidence of rehabilitation, denying him a parole date simply because of the nature of [his] offense and prior conduct would raise serious questions involving his liberty interest in parole... A continued reliance in the future on an unchanging factor, the circumstance of the offense and conduct prior to imprisonment, runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation.

Biggs, 334 F.3d at 916-17.

Such continued reliance on the unchanging factors of the commitment offense, coupled with a failure to give weight to factors favoring parole, results in a due process violation. See e.g. Iron v Warden of Cal. State Prison-Solano, 358 F.Supp.2d

936,947 (E.D. Cal. 2005)(appeal pending)(finding due process was violated when petitioner, who had served 16 years of a 15 to life sentence was found unsuitable though he had met the suitability criteria); Masoner v California, 2004 WL 1080176 (C.D. Cal. Mar. 4, 2004)(N.O. CV 03-1261-ER)(order of denial to Respondent's application for stay of district court order granting habeas relief that repeated denial of parole based solely on commitment offense, without any evidence that prisoner's release would pose a danger to the public safety, violates due process).

Furthermore, repeated denials of parole based upon the nature of the commitment offense alone violates due process requirements "where no circumstances of the offense reasonably could be more aggravated or violent than the minimum necessary to sustain a conviction for that offense." Scott II 133 Cal.App.4th at 598 (citing Rosenkrantz, 29 Cal.4th at 683). Therefore, to be constitutional, a finding of unsuitability must be based on "some evidence that the particular circumstances of [the life prisoner's] crime-circumstances beyond the minimum elements of his conviction - indicated exceptional callousness and cruelty with trivial provocation, and thus suggested he remains a danger to public safety." Dannenberg, 34 Cal.4th at pg. 1098.

Finally, as recently held in Rosenkrantz, continuing to deny parole based upon the nature of petitioner's crime violates Due Process. The reasons for this decision were as follows:

First, continued reliance upon the unchanging facts of petitioner's crime makes a sham of California's parole system and amounts to an arbitrary denial of petitioner's liberty interest.

Second, in this case, the circumstances of petitioner's crime do not amount to some evidence supporting the conclusion that petitioner poses an unreasonable risk of danger if released. Rosenkrantz II, 444 F.Supp.2d at 1082-83. Moreover, the court recognized that such "continued reliance on such unchanging circumstances, after two decades of incarceration and half a dozen parole hearings violates due process

Because petitioner's commitment offense has become such an unreliable predictor of his present and future dangerousness that it does not satisfy the some evidence standard." Id. at 1084.

Here, the circumstances are akin to Rosenkrantz, in that

petitioner has maintained an exemplary prison record, has greatly matured and the Board continues to deny him parole release. It has now been almost 23 years since petitioner was placed in the custody of the CDCR. Since that time, he has obtained vocational training, including thousands of hours of work, participated in copious therapy and self-help programs and has realistically planned for his release. Continuing to rely on petitioner's commitment offense as a factor predicative of his future dangerousness in the community is not only irrational, but violates Due Process of law.

#### Unchanging fact of Commitment Offense

As discussed, the Board's decision is not supported by even the modest amount of evidence required by Due Process. The Board's decision was based on an unreasonable determination of the facts in light of the evidence (28 U.S.C. 2254(d)(2)). None of the relevant factors considered by the Board support a finding of unsuitability for petitioner. To the contrary, all the evidence in the record supports a determination that petitioner is currently and immediately suitable for parole.

All the evidence in the record before the Board showed petitioner posed no risk to the community, no more than the average person in the community. Under California requirements petitioner was entitled to release unless "he pose[d] an unreasonable risk of danger to society if released from prison." 15 CCR 2402(a). an "at worst" low risk is not an unreasonable one.

There remains no evidence that petitioner could benefit from more therapy in any manner that would change the assessment of the danger he does not pose to the community if released

Petitioner already benefits from a "low" risk assessment by prison psychologists. In fact, his danger to the community was described in his psychosocial assessment as very low. Recently, the Board found that petitioner could benefit from continued self-help and therapy. To the contrary, he already has a negligible level of dangerousness if released to the community and has participated in numerous self-help and therapy programs.

Every piece of evidence considered by the Board shows that petitioner has participated in extensive therapy and has achieved the lowest possible predictor of future violence. Therefore, there is no basis for a recommendation that he participate in additional therapy.

**Denial based upon the language of 2402(c)(1)(A-E) is Impermissible as those terms are Unconstitutionally Vague**

The Board has consistently determined that petitioner is unsuitable for parole because of his commitment offense. The Board describes the offense as "cruel" and "callous" with a "trivial" motive evidencing petitioner shows a "callous disregard for human suffering." Not only is there no evidence in the record to support this finding, but the Board is simply using terms to justify a decision that is improper. By stating a crime is "cruel" or "callous" does not immediately make it so. Coupling the circumstances of a commitment offense in these terms to justify an unwarranted and baseless decision is improper.

Though the Rosenkrantz court determined there was "some evidence" to support parole denial, <sup>TODAY ROSENKRANTZ IS A FOOL</sup> the court stated it could not support parole denial on the basis that the murder involved cruelty or callousness. the court noted, "all murders, by their NATURE involve a disregard for the life and suffering of another.

Rosenkrantz, 29 Cal.4th at 420. Similarly, there is nothing special, extraordinary or different about the murder for which petitioner was convicted that rises to the level of "cruel" or "callous". Petitioner's conduct involved no more than necessary to commit the crime of felony murder.

Current Board regulations state a factor of unsuitability for a crime that is "especially heinous, atrocious, or cruel" considering the following factors:

- A. Multiple victims were attacked, injured or killed in the same or separate incidents.
- B. The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
- C. The victim was abused, defiled or mutilated during or after the offense.
- D. The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
- E. The motive for the crime was inexplicable or very trivial

in relation to the offense.

CCR 2402(c). Application of these standards can only withstand a vagueness inquiry if the regulations are sufficiently precise to guide the Board and prevent arbitrary and discriminatory enforcement. United States v Doremus, 888 F.2d 630,634 (9th Cir. 1989). The aforementioned protection can only be achieved through limiting instructions that are known to and applied by the decision-maker. However, in order to be proper, such limiting instructions must be applied through an individualized review and inquiry of the defendant and the crime. Proffitt v Florida, 428 U.S. 242,251-52 (1976).

Here, the subcategories listed above do provide minimal limiting instructions to guide the Board as they determine what "heinous, atrocious, or cruel" mean. More importantly, application is not individualized to the petitioner or his crime. Rather, the Board masks a denial in terms supported by the above referenced language in order to justify otherwise baseless decisions. With respect to petitioner's crime, there is nothing to make these sub-sections apply. First, there were multiple victims in petitioner's crime. Mrs Aikens died of heart failure and Ms Fomasi was not physically injured. The victims were not abused, defiled or mutilated after the offense. Finally, there is nothing exceptional about this case.

## MEMORANDUM OF POINTS AND AUTHORITIES

It is well established that "the Board of Prison Terms is authorized by statute to determine parole suitability, and to exercise its discretion in deciding whether to grant or deny parole". (Ca. Penal Code §3040, 5075 et seq.; In re Fain (1983) 145 Cal. App. 3d, 540,548, 193 Cal. Rptr. 483; In re Rosenkrantz (2000) 80 Cal. App. 4th.409, 95 Cal. Rptr. 2d 279,290). That discretion, although broad, is not absolute and the Board's decisions must be supported by "some evidence". (In re Powell (1988) 45 Cal. 3d 894, 902-904, 248 Cal. Rptr. 431; also see Terhune v. Superior Court (1998) 65 Cal.App.4th 864, 872-873, 76 Cal. Rptr.2d 841; In re Minnis (1972) 7 Cal. 3d 639, 646-647, 102 Cal. Rptr. 749; In re Rosenkrantz (2000) supra. at p. 290). [Although a prisoner serving an indeterminate sentence is "not entitled to have his term fixed at less than the maximum or to receive parole, he is entitled to have his application for these benefits duly considered"].

"The Board of Prison Terms is required to determine parole suitability according to the guidelines set out in section 2402, (California Code of Regulations, Title 15 Division 2), Subsection (a) of section 2402, provides that, [r]egardless of the length of time served, a life prisoner shall be found unsuitable for denied parole if in the judgement of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison". (In re Rosenkrantz, supra, at p.290).

Pursuant to Penal Code §3041 (b) a release date is presumptively required unless the gravity of the offense is such that the public safety requires a longer period of incarceration.

In conducting this analysis, the Board is to review the circumstances of the life offense. In this regard, "a parole denial may ultimately be based entirely on the nature of the commitment offense, as long as all other administratively prescribed "relevant factors" have been considered" by the Board.

(§2402(b) [all "relevant, reliable information available to the panel shall be considered in determining suitability for parole"]; In re Seabock (1983) 140 Cal. App. 3d 29, 38-39, 189 Cal. Rptr. 310; In re Rosenkrantz, *supra* at p.292.

As required by law (P.C.3041) petitioner's minimum parole (MEPD) was set at years. 9/17/2000

The Board is obliged to hold a fair hearing at which unbiased commissioners actually read reports and other documents and they make a reasoned decision based on appropriate factors. In re Rosenkrantz (2000) 80 Cal. App. 4th 409, 427-428. Simply "going through the motions" so that the Board can recite a post hoc rationalization for a decision already made will result in a denial of procedural and perhaps substantive due process to the affected prisoner. In re Powell (1988) 45 Cal. 3d 894, 902; In re Johnson (1995) 35 Cal. App. 4th 160; In re Rosenkrantz, *supra*, at p.428.

California Penal Code section 3041(a) provides that the Board "shall normally" set a parole release date. Section 3041(b) mandates as follows:

The panel or Board shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting.

In this case, as has been demonstrated herein above, the Board did not follow P.C. sec. 3041(b) nor CCR, Title 15, Div. 2 sec. 2402. There was no evidence to support its findings of unsuitability.

All acts of murder by their nature involve a disregard for the life and suffering of another human being. In re Rosenkrantz *supra*, at p.425. Given the circumstances of this offense, compared to all other 1st degree murders, there is no evidence that petitioner displayed "an exceptionally callous disregard for human suffering".

## PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES (continued)

## "The Rule of Parole Hearings"

It has become necessary to "Identify the problem" where parole hearings, the decisions rendered and court reviews are concerned; clarifying the Spirit and Intent of the process: California Penal Code section 3041(b) states in part: "...board shall set a date Unless...comsideration for public safety..." The functioning or mandatory words in this section order or "create" a federally protected liberty interest under U.S.C. 14th amendment. Due Process. This is supported under U.S. Supreme Court rulings of Greenholtz and Allen and Ninth Circuit interpretations under McQuillion v Duncan and Biggs v Terhune. The Ninth Circuit has also ruled that Sandin v Conner does not apply to parole hearings, only day to day operations of prisons. This does not remove the mandatory language of PC 3041(a). Since Powell v Gomez (9th Cir. 1990's), the U.S. Supreme Court's Superintendent v Hill has been authorized for court review of the California governor's and Board of Parole Hearing decisions. This ruling is suspect for a couple of reasons concerning the use of "some evidence":

1. It was authorized for use in keeping a high profile inmate in prison: The Onion Field killer, Greg Powell. Like Sandin v Conner, Supt. v Hill involves day to day prison operations, this time the disciplinary process.
2. It allows for, provides for abuses in both the decision making and review processes. This was the reason for the Ninth Circuit and lower courts to rule:
  - (a) Biggs v Terhune: the some evidence used must be based on an "indicia of reliability" to support the use of the factor and that the continued use of the commitment offense and prior conduct without an "indicia of reliability" that the factor used proves the person is a current unreasonable risk of danger to society if released from prison violates Due Process.
  - (b) Rosenkrantz v Marshall (U.S. District Court, Central District, Cal. 2006), stated that some evidence cannot mean "ANY" evidence and there must be "an indicia of reliability".

As a result of In re Rodriguez (a lengthy court case on parole hearings), the court ordered, to my understanding, the

old Adult Authority which became the Board of Parole Hearings, to write rules to standardize, prevent abuses, and allow for review of parole hearings. (This became the basis for the 1977 enactment of PC 3041). The purpose was really to end the "gut feeling" decision making process of the Board. This was accomplished and submitted to the Office of Administrative Law (OAL) for review. It was then placed in the CCR Title 15 division 2 manual. The appropriate sections of that text are summarized below:

CCR 2000(b)(48): Good cause. A finding by the Board based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.

CCR 2400: "This article implements Penal Code section 3041..."

CCR 2402(a): summarized that the Board shall find you suitable if they cannot prove you are an "unreasonable risk of danger to society if released from prison"

CCR 2402(b): "All relevant and reliable information available to the Panel shall be considered in determining suitability for parole".

CCR 2402(c): Factors tending to show suitability, and (d) factors tending to show <sup>un</sup>suitability. In addition to these the Board shall consider the intent of the sentencing court; such as a plea bargain, etc...

The above CCR requirements constitute Administrative Law and their implementation are a matter of law with the same protections that a Penal Code statute, state or federal constitutional amendment has; Due Process of law or Due Course of law. Any new rule or modification of a rule must be processed through the OAL for review and approval.

The Board must find by a preponderance of evidence that there is good cause/good reason factually supported by the record that an inmate is a current unreasonable risk of danger to the public if released on parole, or they must find for unsuitability. Then they must proceed via CCR 2403 to set a term. At this point it is necessary to point out that "time served" nor "not enough time served" (referring to the minimum eligible parole date), are to be considered when making the decision of suitability.

It is a given that you have served the "time for the crime". Time wise, an inmate that has served 17 years and another inmate that has served 27 years are equal in the suitability, decision-making process. Particularly, if they have an indeterminate Term to Life sentence. (The Board was not given some evidence authority). Upon court review, starting with Powell v Gomez, the court has been authorized to make a decision that the Board had some evidence to support their decision. However, federal courts have ruled that some evidence cannot mean "ANY" evidence and there must be "some indicia of reliability".

The vast majority of state courts have taken a position that as long as the Board cites the proper words, that's all that is necessary. This allows for serious abuses of discretion and review, rendering the process to a "No Parole Policy". This results in pandering to the governor's whims. Without a complete comprehensive review of the record, ~~how~~ can the court determine if a "consideration" was actually made. Was the Board simply "mouthing" the required words? Because of these potential abuses we are asking for (eventually) the Ninth Circuit to revisit the Powell v Gomez analysis. That should be a complete review of the record on how "some evidence" under Supt. v Hill is being used today. Also, to determine if that standard of evidence is still appropriate for parole use, or should it be confined to the day to day operation of prisons. Also to require the courts to find that there is good cause/good reason and a preponderance of evidence to support the decision made. Otherwise, require the state courts to ensure, (via evidentiary hearing), that the Board was complying with Administrative Law and Penal Code. At all times we must defer to the federal courts to determine if the state courts, made an appropriate review. If there was some evidence, (not just "ANY" evidence), with an "indicia of reliability" that the petitioner poses an unreasonable and current risk of danger to society if released on parole. If this evidence is not present, then there has been a Due Process/Liberty Interest violation. This is both unreasonable and contrary to

clearly established federal law. Including but not limited to:

- (a) U.S. Supreme Court decisions in Greenholtz and Allen
- (b) Ninth circuit court interpretations of the above in
  - 1) McQuillion v Duncan (2002)
  - 2) Biggs v Terhune (2003)
- (c) U.S. District Court interpretations of the above in;
  - 1) Robert Rosenkrantz v Marshall (CD of Cal. 2006)
  - 2) Eugilio Martin v Marshall (ND of Cal. 2006)

Conclusion

PETITIONER SUBMITS TO THIS HONORABLE COURT THESE WORDS AND HIS EXHIBITS, NOT FOR A RETRIAL. PETITIONER CONFESSED TO THIS CRIME ON THE 3RD DAY HE WAS IN THE COUNTY JAIL. PETITIONER HAS ALWAYS TAKEN FULL RESPONSIBILITY FOR THIS CRIME THAT HE COMMITTED THAT TOOK THE LIFE OF MRS. AIREA AND FOR THE TRAUMA HE FELT MISS FOMASI THROUGHT.

IF GIVING MY LIFE TODAY WOULD CHANGE THE EVENTS OF THIS CRIME I COMMITTED ALMOST 23 YEARS AGO, PETITIONER WOULD DO SO. THERE ISN'T A DAY THAT GOES BY THAT PETITIONER ISN'T ASHAMED AND SADDED AND EXTREMELY SORRY FOR CAUSING THE DEATH OF MRS. AIREA ON JANUARY 25TH 1984 AND FOR THE TRAUMA HE FELT MISS FOMASI THROUGHT.

PETITIONER IS NOT ASKING FOR A RETRIAL BY ANY COURT. PETITIONER IS ASKING THIS HONORABLE COURT TO EXAMINE THE RECORD AND SEE WHAT THE BOARD OF PAROLE HEARINGS (BPH) HAS USED AT PETITIONER'S LAST 3 HEARINGS TO DENY PETITIONER HIS PAROLE RELEASE DATE FOR 3 YEARS IN A ROW, OF WHICH EQUALS 9 YEARS OF PAROLE DENIALS, HAVING HAD NO EVIDENCE FROM PETITIONER'S OVER 23 YEARS OF INCARCERATION TO PROVE PETITIONER IS AN UNREASONABLE RISK TO SOCIETY OR THAT HE IS A THREAT TO PUBLIC SAFETY.

PETITIONER SUBMITS HIS EXHIBITS A, B, C, D, E, F, G, H TO PROVE TO THIS HONORABLE COURT THAT THE BPH TOTALLY IGNORED ALL OF PETITIONER'S EVIDENCE THAT PROVES HE IS NOT A THREAT TO SOCIETY NOR IS HE A RISK TO PUBLIC SAFETY. PETITIONER CONTENTS THAT IF THE BPH WOULD HAVE GIVEN HALF OF THE CONSIDERATIONS TO PETITIONER'S POSITIVE PROGRAMS AS THE BPH DID TO RETRYING PETITIONER FOR THE CRIME HE CONFESSED TO, PETITIONER WOULD HAVE RECEIVED HIS LEGAL AND JUST RELEASE DATE.

PC 3041 (a)(6) CREATS A DUE PROCESS LIBERTY INTEREST IN A PAROLE

RELEASE DATE. PETITIONER SUBMITS THAT AFTER VIEWING PC SUBSECTIONS 180.1170-2933 - 3001 - 3040 AND 3041, THERE IS CLEARLY A LEGISLATIVE INTENT TO CODIFY SEPARATE AND DISTINCT PROVISIONS FOR PROVIDING PUNISHMENTS FOR VARIOUS FORMS OF HOMICIDE.

BASED ON PETITIONER'S BELIEF IN THE 8TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE CALIFORNIA STATE STATUTES, LAWS, REGULATIONS AND THE 15 REQUIREMENTS THAT PRODUCE A LIBERTY INTEREST IN PAROLE, AS WELL AS STATE DUE PROCESS PROTECTIONS (IN RE ALWIS 7 CAL. 3D 639, 646 (1972), (IN RE PROSEKTRASZ P.R. CAL. 4TH CIR. 616, 655 (2002)) PETITIONER'S CLAIMS ARE UNDIL.

PETITIONER IS BEING DENIED HIS RELEASE DATE AS A RESULT OF ARBITRARY APPLICATION OF THE LAW, BOTH STATE AND FEDERAL. THERE HAS BEEN NO EVIDENCE PRODUCED AT ANY OF PETITIONER'S PAROLE BOARD HEARINGS (2000 2003 2007) THAT HEARILY PROVES THAT PETITIONER IS A THREAT TO SOCIETY OR A RISK TO PUBLIC SAFETY. THE 9TH CIRCUIT COURT HAS STATED THAT THE DETERMINATION THAT PETITIONER IS UNFIT FOR PAROLE MUST BE SUSTAINED BY THE EVIDENCE BEING SOON INDICATING OF PREDICTABILITY (NK DeMata v. Director) 306 F.3d 885, 902 (9TH Cir. 2002). BIGGS V. TERHUNE 334 F.3D 910, 915 (9TH Cir. 2003). CONTINUED USE OF UNCHARACTERISTICS CREATES A CIRCUMSTANCE THAT PETITIONER WILL NEVER BE ABLE TO DO ANYTHING ABOUT. RESPECTFULLY SUBMITTED

I, Clifford Bair, PETITIONER, declare under penalty of perjury that the foregoing is true and correct.

DATE: 5/8/07

Sig: Clifford Bair

PRAYER FOR RELIEF

Petitioner/Appellant respectfully requests the following relief:

1. That the BPH be found to be using crime based unsuitability criteria that is unlawful and constitutionally vague.
2. That the court will find that the crime based parole unsuitability criteria applied against the appellant are "outside of controlling legal principles" and/or in a manner that usurps legislative function.
3. That the court will find there is no evidence in the record to support the position that appellant poses an "unreasonable risk of danger to society if released".
4. That the court will find that appellant is suitable for parole and apply appropriate orders.
5. That the court will find that appellant has served far in excess of the applicable matrix of terms and order appellant's immediate release and discharge from custody.

**VERIFICATION**

I, Clifford Bair, affirm that I am the petitioner/appellant in the above entitled petition and that all information and statements contained herein are true and correct to the best of my ability under penalty of perjury.

Clifford L. Bair



DATE: 5/31/2007

CLIFFORD BAIR C 95079  
L3 346 P.O. BOX 20  
TRACY, CA 95378 0600

PROOF OF SERVICE BY MAIL

I VALERIE BAIR NOT BEING A PARTY TO THIS ACTION DECLARE  
THAT I AM A RESIDENT OF ROSEVILLE, CALIFORNIA. THAT I AM OVER  
THE AGE OF 18 YEARS OF AGE.

ON THIS DATE MARCH 4th, 2008 I HAVE SERVED A COPY  
OF THE FOLLOWING DOCUMENT: CLIFFORD BAIRS Writ of Habeas Corpus

BY PLACING THIS DOCUMENT IN A SEALED ENVELOPE WITH POSTAGE  
PREPAID IN THE UNITED STATES MAIL IN A DEPOSIT BOX SO PROVIDED  
HERE IN ROSEVILLE, CALIFORNIA. ADDRESSED AS FOLLOWS:

Cherk of the Court  
United States District Court  
for the Northern District  
450 Golden Gate Ave  
Box 36060  
San Francisco, CA 94102

Office of the Attorney General  
Ms Denise A. Yates Esq  
455 Golden Gate Ave Suite 11000  
San Francisco, CA  
94102 7004

I VALERIE BAIR DECLARE UNDER PENALTY OF PERJURY THAT THE  
FORGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. THAT  
THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THIS ADDRESS.

EXECUTED ON THIS DATE: 3-4-08

SIGN: Valerie Bair

## **EXHIBIT AA**

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life ) CDC Number: C-95079  
Term Parole Consideration )  
Hearing of: )  
CLIFFORD BAIR )  
\_\_\_\_\_  
)

**INMATE COPY**

DEUEL VOCATIONAL INSTITUTION

TRACY, CALIFORNIA

MARCH 30, 2007

8:47 A.M.

PANEL PRESENT:

STAN KUBOCHI, Presiding Commissioner  
DIANE LUSHBOUGH, Deputy Commissioner

OTHERS PRESENT:

CLIFFORD BAIR, Inmate  
BEN DAVEY, Attorney for Inmate  
PHILLIP ABRAMS, Deputy District Attorney

CORRECTIONS TO THE DECISION HAVE BEEN MADE

                   No      See Review of Hearing  
                   Yes      Transcript Memorandum

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## PROCEEDINGS

DEPUTY COMMISSIONER LUSHBOOUGH: We're on record

3                   **PRESIDING COMMISSIONER KUBOCHI:** It is 8:47, and  
4 this is a Subsequent Parole Consideration Hearing for  
5 Clifford Bair, B-A-I-R, CDC number C-95079. Today's  
6 date is March 30th, 2007. And we are located at the  
7 Deuel Vocational Institute [sic].

8                   Mr. Bair, I'm going to state some background  
9 information concerning your current life sentence. And  
10 I want you to know that as I provide the background  
11 information, as will Commissioner Lushbough discuss  
12 your post-commitment factors, is that if either one of  
13 us states facts that you believe need correction, we're  
14 going to allow you to do so. But all I ask of you is  
15 that you wait for the speaker to end a thought, phrase,  
16 or sentence, because these proceedings are tape  
17 recorded. It's later going to be transcribed into a  
18 written transcript of the proceedings.

19 | INMATE BAIR: Yes.

20 PRESIDING COMMISSIONER KUBOCHI: You're going to  
21 be given a copy. But the transcriber, that is the  
22 people that convert the voice into a written copy, can't  
23 make an accurate record if two or more people speak at  
24 the same time. What they do is if they can't hear, they  
25 put inaudible. And since we want to make an accurate

1 record because this hearing is very important to you, I  
2 want you to be assured that we're going to obtain  
3 accurate information.

4 But, as I've indicated, the ground rules are just  
5 please wait for the speaker to finish. And I'm also  
6 telling you this because I don't want you to feel that  
7 if you hear inaccuracies, that you have to wait all the  
8 way until the end and get all frustrated.

9 **INMATE BAIR:** I agree.

10 **PRESIDING COMMISSIONER KUBOCHI:** You can make an  
11 immediate correction. Simply wait for a pause. Our  
12 records in the Board report indicate that you were  
13 received into the Department of Corrections from Sonoma  
14 County. And Mr. Abrams, we're going to do voice  
15 identification, but could you please note the docket  
16 number as I read the basic facts and then provide me the  
17 docket number at the end.

18 Your life term began on or about April 26th,  
19 1985, and that you were -- the controlling offense was  
20 murder conviction in violation of Penal Code Section  
21 187. There were also additional counts, count two, a  
22 conviction for 459 of the Penal Code, which is burglary.  
23 Count Four, a violation of Penal Code Section 236, which  
24 is false imprisonment of another. Count Eight, a  
25 violation of Penal Code Section 487, grand theft. Count

1 10, a violation of Section Penal Code 496, possession of  
2 stolen property, and for that you received a life  
3 sentence and that your minimum eligible parole date was  
4 September 17th of 2000.

5 Do you have our docket number, Mr. Abrams?

6 **DEPUTY DISTRICT ATTORNEY ABRAMS:** The docket  
7 number for the Superior Court?

8 **PRESIDING COMMISSIONER KUBOCHI:** Yes.

9 **DEPUTY DISTRICT ATTORNEY ABRAMS:** The Sonoma  
10 County Superior Court? Yes, that docket number is  
11 12451-C.

12 **PRESIDING COMMISSIONER KUBOCHI:** Thank you. And  
13 at this time, Mr. Bair, we're going to have voice  
14 identification to assist the transcriber in making a  
15 written transcript. We're going to go around the table.  
16 We're going to state our first name. We're going to  
17 state our last name, spell our last name. And when it  
18 comes to your turn, add your CDC number. My name is  
19 Stan Kubochi, K-U-B-O-C-H-I, Commissioner

20 **DEPUTY COMMISSIONER LUSHBOUGH:** Diane Lushbough,  
21 L-U-S-H-B-O-U-G-H, Deputy Commissioner.

22 **INMATE BAIR:** My name is Clifford Bair, B-A-I-R,  
23 C-95079.

24 **ATTORNEY DAVEY:** Ben Davey, D-A-V-E-Y, appointed  
25 Counsel for Mr. Clifford Bair.

1                   **DEPUTY DISTRICT ATTORNEY ABRAMS:** Phillip Abrams,  
2                   A-B-R-A-M-S, Deputy District Attorney, from Sonoma  
3                   County.

4                   **PRESIDING COMMISSIONER KUBOCHI:** Thank you.

5                   There is an officer here for security purposes only and  
6                   is not a participant. Sir, before we start your  
7                   hearing, before the proceedings, you were, you and your  
8                   correctional counselor reviewed a BPT 1073 form; is that  
9                   correct? And I showed you the form?

10                  **INMATE BAIR:** Yes.

11                  **PRESIDING COMMISSIONER KUBOCHI:** That's before  
12                  you now. And the purpose of that form, Mr. Bair, is  
13                  that this Panel, in conducting your parole suitability  
14                  hearing, must accommodate any physical disabilities.  
15                  And I note that you have two hearing aids. And, Mr.  
16                  Bair, do you believe that you can adequately hear people  
17                  discussing your case with the assistance of the hearing  
18                  aids?

19                  **INMATE BAIR:** Yes, Sir, I do.

20                  **PRESIDING COMMISSIONER KUBOCHI:** And you are  
21                  wearing glasses. And that the glasses allow you to read  
22                  documents, if necessary; is that correct?

23                  **INMATE BAIR:** That's correct.

24                  **PRESIDING COMMISSIONER KUBOCHI:** And you can see  
25                  me with the assistance of those glasses?

1           **INMATE BAIR:** Yes, sir.

2           **PRESIDING COMMISSIONER KUBOCHI:** And is there any  
3 other physical disability that you have at this time?

4           **INMATE BAIR:** None.

5           **PRESIDING COMMISSIONER KUBOCHI:** Thank you. And  
6 you're comfortable sitting there as best you can. You  
7 are shackled because that is the rules of Deuel  
8 Vocational Institute, but other than being shackled,  
9 you're comfortable?

10          **INMATE BAIR:** Yes, Sir, thank you.

11          **PRESIDING COMMISSIONER KUBOCHI:** And have you  
12 been on any medication in the last year, sir?

13          **INMATE BAIR:** Yes, Sir.

14          **PRESIDING COMMISSIONER KUBOCHI:** What symptoms  
15 was the medication prescribed?

16          **INMATE BAIR:** I have a urination problem to where  
17 I have to go -- where I go to the bathroom frequently.  
18 And this medication that I'm on is to help to control  
19 that.

20          **PRESIDING COMMISSIONER KUBOCHI:** And the record  
21 will reflect that you're about 62 years old?

22          **INMATE BAIR:** Yes.

23          **PRESIDING COMMISSIONER KUBOCHI:** And that your  
24 attorney brought that to my attention, and I want you to  
25 know that if at any time during these proceedings, you

1 have to use the restroom facilities, you just let me  
2 know. Do you understand that? We'll take a recess.

3 **INMATE BAIR:** Thank you.

4 **PRESIDING COMMISSIONER KUBOCHI:** And I don't want  
5 you to wait too long.

6 **INMATE BAIR:** Thank you.

7 **PRESIDING COMMISSIONER KUBOCHI:** When you feel  
8 you have to use the facility, you just let me know and  
9 we'll just call a recess.

10 **INMATE BAIR:** Thank you very much.

11 **PRESIDING COMMISSIONER KUBOCHI:** In regard to the  
12 medication you're taking, do you believe that the  
13 medication affects your ability to think clearly?

14 **INMATE BAIR:** No.

15 **PRESIDING COMMISSIONER KUBOCHI:** And as you sit  
16 here today, do you believe that you are thinking  
17 clearly?

18 **INMATE BAIR:** Yes, Sir.

19 **PRESIDING COMMISSIONER KUBOCHI:** And is there any  
20 reason why you -- is there any reason that you cannot  
21 speak to us in an effective manner?

22 **INMATE BAIR:** No.

23 **PRESIDING COMMISSIONER KUBOCHI:** Thank you, sir.  
24 Mr. --

25 **INMATE BAIR:** You're welcome.

1                   **PRESIDING COMMISSIONER KUBOCHI:** Mr. Davey, is  
2 there any other issues other than the once I've  
3 discussed pursuant to the ADA that you believe this  
4 Panel should address?

5                   **ATTORNEY DAVEY:** No, Sir.

6                   **PRESIDING COMMISSIONER KUBOCHI:** Thank you. Mr.  
7 Bair, what was the highest grade in school that you  
8 completed either before or after your incarceration?

9                   **INMATE BAIR:** Twelfth.

10                  **PRESIDING COMMISSIONER KUBOCHI:** Twelfth grade,  
11 so you can read and write English with no difficulties?

12                  **INMATE BAIR:** Yes.

13                  **PRESIDING COMMISSIONER KUBOCHI:** Thank you, sir.

14                  **INMATE BAIR:** You're welcome.

15                  **PRESIDING COMMISSIONER KUBOCHI:** The purpose of  
16 today's hearing, as you know, sir, is to once again,  
17 consider your suitability for parole. In doing so, we  
18 will consider several factors. I will state for the  
19 record the facts of the life crime. I'll review your  
20 prior record, if any, before your incarceration. I will  
21 review your personal and social history before your  
22 incarceration, and I will also discuss your parole  
23 plans.

24                  Commissioner Lushbough will review your post-  
25 conviction factors that include any evaluations of

1 mental health evaluators, correctional counselors, and  
2 other factors that we call programming. That is your  
3 job, your self-study, self-help groups, if any, as well  
4 as any other issues related to your post-commitment.

5 Sir, before we recess for deliberations, the  
6 District Attorney's office, that is the representative  
7 from Sonoma County, may choose to ask you questions.  
8 Your attorney may choose to ask you questions. The  
9 Panel may ask you questions. And before recessing for  
10 deliberations, the District Attorney's representative  
11 will be allowed to provide a closing statement. Mr.  
12 Davey will provide a closing statement on your behalf,  
13 and then you will be given an opportunity to tell this  
14 Panel why you believe you are suitable for parole today.

15 In addition, we will note for the record any  
16 letters of opposition or support. We will then declare  
17 a recess. We will deliberate, and we'll reach a  
18 decision. We will reconvene and tell you the decision  
19 that we make. You'll be given a written copy, and we  
20 will tell you the reasons for our decision. If you are  
21 found suitable for parole, the length of your  
22 confinement will be explained to you.

23 As I've indicated, sir, you and your attorney in  
24 addition to your statement of reasons why you believe  
25 you are suitable, may provide any documents that you

1 believe support a finding of suitability. In regard to  
2 parole plans, it's very important that you tell us what  
3 those plans are as of today. If those plans have  
4 changed from any other written correctional counselor  
5 reports, those changes will not be held against you  
6 because we are aware that factors change on the outside  
7 of prison.

8 Sir, the California Code of Regulations states  
9 that regardless of time served, a life inmate shall be  
10 found unsuitable for and denied parole if, in the  
11 judgment of the Panel, the inmate would pose an  
12 unreasonable risk of danger to society if released from  
13 prison. In regard to this hearing, you have several  
14 rights, sir. You have the right to have timely notice.  
15 Did you receive timely notice of this hearing?

16 **INMATE BAIR:** Yes.

17 **PRESIDING COMMISSIONER KUBOCHI:** You also have  
18 the right to review your Central File. Were you given a  
19 chance to look at the Central File?

20 **INMATE BAIR:** Yes, Sir, I was.

21 **PRESIDING COMMISSIONER KUBOCHI:** And you also  
22 have the right, as I've indicated, to present documents  
23 and your attorney is permitted to present documents on  
24 your behalf that you believe support a finding of  
25 suitability. In addition, sir, you have the right to

1 have your case heard today by an impartial Panel. Are  
2 you prepared to proceed today with this Panel?

3           **INMATE BAIR:** Yes, Sir, I am.

4           **PRESIDING COMMISSIONER KUBOCHI:** Sir, as I've  
5 indicated, you will receive a written copy of our  
6 decision. And that decision will become final within  
7 120 days. And you will also receive a copy of the  
8 transcript of today's proceedings. As to any appeal  
9 rights, I'm going to ask you to direct those questions  
10 to your attorney. Mr. Davey does an excellent job and  
11 he's very knowledgeable about your rights.

12           Sir, you are not required to admit or discuss  
13 your offense. However, this Panel does accept as true  
14 the findings of the court from Sonoma County, do you  
15 understand that?

16           **INMATE BAIR:** Yes.

17           **PRESIDING COMMISSIONER KUBOCHI:** We're not here  
18 to re-try your case. We're not here to re-litigate any  
19 of the issues that were resolved in the Superior Court  
20 of Sonoma County, and that includes facts in the  
21 probation report. You certainly can tell us about any  
22 inaccuracies or any matters that you believe require  
23 correction. In regard to today's hearing, will you be  
24 talking about your -- talking about the life crime?

25           **INMATE BAIR:** Yes, Sir, I will.

1                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. Now to  
2 the extent that you can, please raise your right hand.  
3 That's good enough. You don't have to raise it too  
4 high. I don't want you to hurt your shoulder now. Do  
5 you solemnly swear or affirm the testimony that you give  
6 at this hearing will be the truth, the whole truth, and  
7 nothing but the truth?

8                   **INMATE BAIR:** Yes, Sir, I do.

9                   **PRESIDING COMMISSIONER KUBOCHI:** Thank you very  
10 much.

11                  **INMATE BAIR:** You're welcome.

12                  **PRESIDING COMMISSIONER KUBOCHI:** Commissioner  
13 Lushbough, is there any confidential material that will  
14 be used by this Panel today?

15                  **DEPUTY COMMISSIONER LUSHBOUGH:** No, none will be  
16 used.

17                  **PRESIDING COMMISSIONER KUBOCHI:** Thank you. And,  
18 Mr. Davey, you've reviewed the checklist and you have  
19 the same documents as this Panel?

20                  **ATTORNEY DAVEY:** Yes, Sir, I believe so. And  
21 I've passed the checklist to the District Attorney.

22                  **PRESIDING COMMISSIONER KUBOCHI:** Thank you.

23                  **ATTORNEY DAVEY:** I have additional documents to  
24 submit --

25                  **PRESIDING COMMISSIONER KUBOCHI:** Yes, sir.

1                   **ATTORNEY DAVEY:** -- which consist of a completion  
2 certification for Victim Awareness, Units One through  
3 Six, March '07, on behalf of my client which is not in  
4 the C-File.

5                   **PRESIDING COMMISSIONER KUBOCHI:** Yes, sir.

6                   **ATTORNEY DAVEY:** Additionally, letters from  
7 Veterans Affairs relating to what services they could  
8 provide for Mr. Bair on the event that he is paroled.  
9 At the appropriate time, I do have a set of documents  
10 for the Board to use during deliberation. My client is  
11 going to be reading a short opening statement, and he'll  
12 hand the packet to the Board.

13                   **PRESIDING COMMISSIONER KUBOCHI:** Sure.

14                   **ATTORNEY DAVEY:** Other than that, I have nothing  
15 else to add.

16                   **PRESIDING COMMISSIONER KUBOCHI:** And, Mr. Bair, I  
17 want you to know that a couple of things. On anything  
18 that isn't in our board packet right now, we're going to  
19 give it back to you or your attorney because the Panel  
20 members are not allowed to put anything in your Central  
21 File. There's a specific process within the Department  
22 of Corrections and primarily your correctional counselor  
23 has the authority or other administrative staff at this  
24 facility have the authority to put things in your  
25 Central File. We can't do that this morning.

1           And the fact that we give back the documents that  
2 you're presenting does not mean we didn't look at them  
3 during deliberations. I want to make that clear to you  
4 because from your end of the table, if they're given  
5 back at the end of this hearing, you -- regardless of  
6 our decision, you're going to say well, these people  
7 didn't even look at it. That's why they're giving it  
8 back. I'm explaining why we're giving it back. Do you  
9 understand that, sir?

10           **INMATE BAIR:** Thank you. Yes, Sir, thank you  
11 very much.

12           **ATTORNEY DAVEY:** Commissioner, one other minor  
13 item.

14           **PRESIDING COMMISSIONER KUBOCHI:** Sure.

15           **ATTORNEY DAVEY:** I was provided this morning at  
16 the table a support letter from Michael Ogness and  
17 Martha Ogness dated, actually this one is dated May  
18 23rd. I think there's one more recent in the file. And  
19 two chronos dated 3/7/07 on behalf of Bottle Stoppers  
20 and also an NA chrono dated February 22nd, '07, which  
21 probably are not in the C-File either but I did receive  
22 copies for me.

23           **PRESIDING COMMISSIONER KUBOCHI:** Okay. We have  
24 them too.

25           **ATTORNEY DAVEY:** Yeah.

1                   **PRESIDING COMMISSIONER KUBOCHI:** So there's no  
2 need to pass those over.

3                   **ATTORNEY DAVEY:** And I've shared those with my  
4 client.

5                   **PRESIDING COMMISSIONER KUBOCHI:** Yes, and thank  
6 you for noting that on the record. Ogness for the  
7 transcriber is spelled O-G-N-E-S-S.

8                   **ATTORNEY DAVEY:** Thank you.

9                   **PRESIDING COMMISSIONER KUBOCHI:** All right. Mr.  
10 Davey, do you have any other matters that you wish to  
11 bring to our attention at this time?

12                  **ATTORNEY DAVEY:** One moment. My client has a  
13 short opening statement he'd like to read.

14                  **PRESIDING COMMISSIONER KUBOCHI:** Sure. Take your  
15 time, sir, and the fact that you're reading is not held  
16 against you. We don't expect polished professional  
17 speakers. I want you to get comfortable with the  
18 knowledge that we will listen to your statement  
19 regardless of whether you are reading it or not. Take  
20 your time. Get composed. Why don't you take a couple  
21 of deep breaths before you start.

22                  **INMATE BAIR:** Good morning. I confessed to my  
23 crime on the third day I was in the county jail. I have  
24 always taken full responsibility for the crime that I  
25 had committed that caused the death of Mrs. Aikens [sic]

1 and for the trauma that I put Mrs. Fomasi through. My  
2 remorse today is the same today as it has been since the  
3 day I found out Mrs. Aikens had died. If there was  
4 anything I could do to turn back the clock and give Mrs.  
5 Aikens her life back today, I would.

6 If giving my life today would take back this  
7 crime that I committed against Mrs. Aikens and Mrs.  
8 Fomasi, I would give my life today for that. If giving  
9 my life today would take the shame and sadness away from  
10 my parents, my mother and father, my brothers and  
11 sisters and their children, I would do that today. If I  
12 could make amends to my two daughters, my six  
13 grandchildren, if there was any way I could turn back  
14 the clock and change these events, I would do that.

15 I wasn't going to talk about my crime today, but  
16 I really don't have anything to hide. I want to discuss  
17 anything with you and the Commissioners and the District  
18 Attorney that you want to discuss with me. And that's  
19 all I've got to say for right now. Thank you very much.

20 **PRESIDING COMMISSIONER KUBOCHI:** Thank you, Mr.  
21 Bair. Any other matters, Mr. Davey?

22 **ATTORNEY DAVEY:** No, Sir, I believe we're ready  
23 to proceed. My client would just object for the record  
24 to being restrained. I know it's the policy of the  
25 facility and I just want to object for the record.

1                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. It's  
2 absolutely agreeable in regard to placing your objection  
3 on the record. I would note that the Panel does not  
4 have any authority over the security rules of this  
5 institution. We don't have the discretion because we do  
6 not have any authority. We don't have the discretion to  
7 make any other accommodations in regard to security.  
8 That is the manner in which this institution conducts  
9 hearings. But your objection is noted for the record.

10                  **ATTORNEY DAVEY:** Thank you, Sir.

11                  **PRESIDING COMMISSIONER KUBOCHI:** For the  
12 transcriber, the second victim, the name is Fomasi, and  
13 it is spelled F-O-M-A-S-I. Aiken, the decedent, is  
14 spelled A-I-K-E-N.

15                  Sir, at this time, I'm going to read a brief  
16 Statement of Facts into the record. It is a summary.  
17 At some point in time, there might be additional  
18 information to the summary as I have tried to pick a  
19 rendition of the facts that is as concise as possible,  
20 but that doesn't mean that the summary I'm going to give  
21 has every fact related to the determination that was  
22 made in Sonoma County. And I'm looking at the Board  
23 report of July 2006.

24                  That states on or about January 20th, 1984, your  
25 ex-wife, Linda Bair, left her home in Visalia to visit

1 with family members in Bodega Bay. She had left you  
2 back at her home in Visalia without any transportation.  
3 Later that night, Inmate Bair stole a pickup truck and  
4 followed his ex-wife to Bodega Bay. You checked into  
5 the Harbor View Motel around noontime on January 24th  
6 under a false name.

7 You had been seen at the motel on January 25th,  
8 however, the pickup truck was missing. On January 26th,  
9 you checked out of the Harbor View Motel and the stolen  
10 pickup truck was discovered about a mile and a half from  
11 Bodega Bay down a ravine totally burned up. The pickup  
12 truck was stripped of its license plates when found. On  
13 January 26th, you purchased a six-pack of beer, a  
14 sandwich, a package of peanuts, and some potato chips at  
15 the Dry Dock Café. The Dry Dock Café is approximately  
16 75 yards away from Mrs. Teresa Aiken's house and forms a  
17 triangle with the Harbor View Motel.

18 Apparently you had been a resident of Bodega Bay  
19 a few years earlier and had done some yard work for the  
20 victim, Teresa Aiken, during that time. During the  
21 afternoon of January 26th, you went to Mrs. Aiken's  
22 house, overpowered her, took her eyeglasses, rendering  
23 her almost blind, tied her up, and gagged her. You then  
24 placed her underneath her bedding and mattresses on the  
25 floor of her bedroom.

1                   At approximately 4:00 to 4:15 p.m., Ms. Rose  
2 Fomasi came to deliver Ms. Aiken's mail. After Ms.  
3 Fomasi entered the house, you pulled a gun and ordered  
4 her to lay down on the floor in the bedroom and not to  
5 look at your face. You then tied up Ms. Fomasi with the  
6 electrical wire from Ms. Aiken's iron. You then left  
7 the residence taking Mrs. Aiken's eyeglasses, keys, and  
8 her car.

9                   Later that night, you abandoned Mrs. Aiken's car  
10 after getting stuck on the shoulder of the Lakeville  
11 Highway across from Gilardi's resort. Gilardi is  
12 spelled G-I-L-A-R-D-I. You then stole an ocean going  
13 sailboat from the Lakeville Marina which is part of  
14 Gilardi's resort.

15                  On January 27th at approximately 7:30 a.m., the  
16 owner of the sailboat noticed the sailboat was missing  
17 from its berth. The owner subsequently found his  
18 sailboat a short distance away stuck on the mud bank of  
19 the Petaluma River. As the owner approached the boat,  
20 the owner observed you waving what appeared to be a  
21 shotgun or a length of pipe ordering the owner to stay  
22 away. The owner then retreated back to the marina where  
23 he watched his boat until Sonoma County Sheriff's  
24 deputies arrived.

25                  While watching the boat, the owner observed you

1 leave the boat and disappear into the surrounding area.  
2 You were eventually found a short distance from the  
3 Board hiding in a floodgate. When you were arrested,  
4 you were found to be wearing clothing taken from the  
5 boat and had in your possession a flare gun, flares,  
6 shotgun shells, and a 182 white tablets later determined  
7 to be amphetamine. .

8 After your arrest, you were brought to the police  
9 interview room. While waiting to be interviewed, you  
10 cut one of your wrists with a piece of plastic in an  
11 apparent suicide gesture. You were taken to the  
12 community hospital for treatment. The autopsy of Mrs.  
13 Aiken revealed that her death was caused by chronic  
14 pulmonary disease, chronic cardiac disease and multiple  
15 traumatic injuries. These injuries included bruising of  
16 the mouth and lips, swollen hands from being tied behind  
17 her back with multiple loops of ropes, petechial  
18 hemorrhages noted on both hands mainly dorsally. The  
19 right hand was confluent purple in coloration and  
20 massively swollen. The pathologist found that the tying  
21 of the victim's hands contributed very significantly to  
22 her death.

23 And I am not reading into the record some of the  
24 forensic matters such as fingerprints, et cetera, that  
25 were taken from various items that tied you to the

1 sequence as noted such as, I believe, the mentioning of  
2 the beer and the sandwich wrapper and the chip bags. I  
3 think some of those items had your fingerprints on it.

4 Briefly, sir, the probation report indicates that  
5 you were born about September 14th, 1944, which would  
6 have placed you about 40 years old at the time of the  
7 crime. And going back in time in October of 1969, it  
8 looks like Riverside Sheriffs Office, reckless driving.  
9 In May of 1974, possession of amphetamines in violation  
10 of Section 11377 of the Health and Safety Code. It  
11 appears to have been related to also a driving while  
12 under the influence of alcohol, stop or detention by  
13 Riverside Sheriffs Office.

14 In Sacramento County on March of 1975, there was  
15 a charge of and a conviction for 12020, possession of a  
16 shotgun, and that appears to be related to a Fish and  
17 Game detention that involved a loaded shotgun in a  
18 vehicle. You were placed on probation for that offense  
19 for three years. In 1980, specifically July, a driving  
20 under the influence of alcohol for which you received  
21 informal probation for the conviction in August of 1980.  
22 In March of 1982, there was a conviction for petty theft  
23 and vandalism. Petty theft in violation of Section 484  
24 of the Penal Code and vandalism Section 594 of the Penal  
25 Code, for which you were placed on one year probation.

1 And you were ordered to do alcohol rehab in order to  
2 make restitution.

3 The caption in the probation report indicates  
4 that you in Santa Rosa, which is Sonoma County, you  
5 vandalized, and I'm going to spell the name of the  
6 store, Diekman, D-I-E-K-M-A-N, Diekman's Bay Store,  
7 Bodega Bay. Apparently you drove your pickup into the  
8 building. Your ex-wife worked at that grocery store.  
9 The damage done was 3,355 dollars and 1982 dollar value.  
10 And subsequently you were arrested for this offense.

11 The probation noted at the time of writing the  
12 report for this sentencing, and I note the date of the  
13 report being October 17th, 1984, or thereabouts, the  
14 probation department noted in an outstanding warrant for  
15 driving under the influence in violation of 2800.1 of  
16 the Vehicle Code, evading a police officer. There was  
17 an outstanding warrant.

18 In regard to your personal history, sir, I'm  
19 going to look for Counsel's edification on the July 2006  
20 Board report. You were born in Kentfield, California to  
21 Ezra, spelled E-Z-R-A, and Blanche, with an E, Blanche  
22 Bair. You were the second to the youngest child with  
23 one older sister and one older brother and one younger  
24 brother, and one -- an older stepbrother and stepsister.  
25 You graduated in 1962 from Esparto High School and

1 attended one year of college at Riverside City College.

2 The Board report indicates that you enlisted in  
3 the Navy in 1962. You achieved the rank of E4 and that  
4 you advised the correctional counselor that you were  
5 honorably discharged in 1966 and through your verbal  
6 narrative and historic information, you had been married  
7 five times with your last relationship ending in divorce  
8 in 1997 and that you had two daughters. And that before  
9 your incarceration, your primary occupation was driving  
10 or operating heavy equipment in the construction  
11 industry.

12 You started using drugs or alcohol in 1966 and  
13 that your drug of choice was what is called today  
14 methamphetamine, perhaps back in those days it was  
15 simply called amphetamines. That your drug use, which  
16 began as I indicated in 1966, continued up until your  
17 incarceration for this offense.

18 Sir, at this time, I'm going to ask Commissioner  
19 Lushbough to discuss your post-commitment factors, and  
20 then we're going to come back and talk about your parole  
21 plans.

22 **ATTORNEY DAVEY:** Sir, just to clarify the record,  
23 I believe my client remarried in '01?

24 **INMATE BAIR:** Yes.

25 **ATTORNEY DAVEY:** To his current wife. So that

1 makes six --

2           **INMATE BAIR:** In '02.

3           **ATTORNEY DAVEY:** In '02. I'm sorry.

4           **INMATE BAIR:** In August. On August 10th.

5           **PRESIDING COMMISSIONER KUBOCHI:** Okay. And then  
6 thank you for updating. Thank you, Mr. Davey. We want  
7 to have accurate information. And, once again, before I  
8 turn this over, if you have to use the facilities, you  
9 let me or your attorney know.

10          **INMATE BAIR:** I'm fine right now. Thank you.

11          **PRESIDING COMMISSIONER KUBOCHI:** Okay. We want  
12 you to be comfortable throughout these proceedings.

13          **INMATE BAIR:** Thank you.

14          **DEPUTY COMMISSIONER LUSHBOOUGH:** Good morning, Mr.  
15 Bair.

16          **INMATE BAIR:** Morning.

17          **DEPUTY COMMISSIONER LUSHBOOUGH:** You were received  
18 into CDC in November, November 2nd, 1984. And as the  
19 Commissioner mentioned, your life term began April 26th,  
20 1985. Your last hearing was July 25th, 2003. That was  
21 at Folsom at which time you were denied parole for three  
22 years.

23          **INMATE BAIR:** Yes.

24          **DEPUTY COMMISSIONER LUSHBOOUGH:** And the period  
25 that I will be reviewing is from July 25th, 2003, to the

1 present time. That's the period of review. I may go  
2 back historically for some areas. But I had a little  
3 trouble getting back to your original classification  
4 score. As close as I could get was 1989 and you were at  
5 99 points at that time. Does that sound about right?

6 **INMATE BAIR:** No.

7 **DEPUTY COMMISSIONER LUSHBOOUGH:** It doesn't. What  
8 does it sound like?

9 **INMATE BAIR:** In, what was it? What year was  
10 it?

11 **DEPUTY COMMISSIONER LUSHBOOUGH:** In '89.

12 **INMATE BAIR:** In 1989, that might have been 99 at  
13 that time, yes.

14 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay.

15 **INMATE BAIR:** I was still at Tehachapi level IV.

16 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay.

17 **INMATE BAIR:** Yes.

18 **DEPUTY COMMISSIONER LUSHBOOUGH:** What did you come  
19 in with? What kind of classification score did you have  
20 initially?

21 **INMATE BAIR:** 105.

22 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. Well, you  
23 got that down to zero in 2001.

24 **INMATE BAIR:** Yes.

25 **DEPUTY COMMISSIONER LUSHBOOUGH:** And then it was

1 19, which was mandatory placement in 2005. And  
2 currently you're carrying the 28 points. Again,  
3 mandatory. It still reflects that you have a zero;  
4 correct?

5 **INMATE BAIR:** Yes.

6 **DEPUTY COMMISSIONER LUSHBOOUGH:** You have one 115.  
7 None in this period of review. It was back in September  
8 of 1998, and that was smoking. And that was  
9 administrative.

10 **INMATE BAIR:** Yes.

11 **DEPUTY COMMISSIONER LUSHBOOUGH:** So you've been  
12 free of those approximately nine years. You have a  
13 total of six 128(a)s, only one within this review period  
14 and that was June 1st, 2005, disrespect towards staff.  
15 You've been free of them about two years now. Do you  
16 recall that? That was in the dental.

17 **INMATE BAIR:** Yes.

18 **DEPUTY COMMISSIONER LUSHBOOUGH:** Any explanation  
19 you want to give?

20 **INMATE BAIR:** Yes, if you would like. I wrote a  
21 letter. I had a medical problem at the time. And  
22 dentist Dr. Diehl was standing here next to me talking  
23 and I was in -- I was very uncomfortable and in some  
24 pain. And when she stepped out of my line of sight and  
25 walked behind me, I reached into my pants and I adjusted

1 myself. I had blisters on the side of my legs and I had  
2 a rash that I was very uncomfortable with.

3 And evidently, Ms. Rhodes, the dental technician,  
4 observed me reaching inside my pants and adjusting  
5 myself. And she reported that to Dr. Diehl. And Dr.  
6 Diehl thought it was a sexual incident, and it wasn't.  
7 I have the medical papers. I think they're in my file  
8 actually. I gave them to my counselor, Mr. Larsen.  
9 Yeah, here we go. Thank you.

10 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. Thank you.

11 **INMATE BAIR:** You're welcome.

12 **DEPUTY COMMISSIONER LUSHBOOUGH:** And this was the  
13 602 that you filed on the 128(a)?

14 **INMATE BAIR:** Yes.

15 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. Okay.

16 **INMATE BAIR:** Those are the medical records that  
17 I got from the medical department to show that I had a  
18 medical problem.

19 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. All right.  
20 Thank you.

21 **INMATE BAIR:** You're welcome.

22 **DEPUTY COMMISSIONER LUSHBOOUGH:** That's all right.  
23 I'll get it to you.

24 **INMATE BAIR:** Thank you.

25 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay, well,

1 moving on. You've already confirmed your high school  
2 graduation in 1962. The highest reading score I found  
3 recently was 9.5. Vocationally, it would appear to me  
4 that most of your work skills and marketable skills have  
5 been obtained through PIA.

6 **INMATE BAIR:** Yes.

7 **DEPUTY COMMISSIONER LUSHBOOUGH:** But I also noted  
8 that you prior to incarceration, you were a welder, a  
9 journeyman plumber, a truck driver, an underground  
10 natural gas worker.

11 **INMATE BAIR:** Yes.

12 **DEPUTY COMMISSIONER LUSHBOOUGH:** Is that correct?

13 **INMATE BAIR:** Yes.

14 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. You do  
15 have certificates of completion on forklift operator in  
16 2006, warehouse worker laborer, you're certified with  
17 1,512 hours. It's a certificate of proficiency. You  
18 also have another certificate for forklift operator and  
19 one for stock inventory in 2006. Warehouseman in 2006,  
20 and also material distribution in 2006. From what I can  
21 gather in going through your Central File, you had been  
22 in metal shop PIA since March of '98, which means at  
23 Folsom State Prison.

24 **INMATE BAIR:** Yes.

25 **DEPUTY COMMISSIONER LUSHBOOUGH:** And you were

1 certified in grinding and also you were quality  
2 inspector since July 2004 with above average grade  
3 points. You've been a fabricator. You've been a tig  
4 and mig welder.

5 **INMATE BAIR:** Yes.

6 **DEPUTY COMMISSIONER LUSHBOOUGH:** As part of your  
7 work history as well as your marketable skills. Your  
8 grades in PIA warehouse in 2005 and 2006 and into 2007  
9 have been above average to exceptional, and currently  
10 they're exceptional.

11 **INMATE BAIR:** Yes.

12 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. At one  
13 point in 2005, you were the infirmary janitor, but I  
14 didn't gather you were there very long.

15 **INMATE BAIR:** A couple of months.

16 **DEPUTY COMMISSIONER LUSHBOOUGH:** Yeah. And also a  
17 janitor on L-III in 2005. Again it doesn't appear you  
18 were there too long.

19 **INMATE BAIR:** Not very long.

20 **DEPUTY COMMISSIONER LUSHBOOUGH:** But you're  
21 certainly characterized as an extremely good worker,  
22 very reliable and dependable. In terms of self-help,  
23 all through this period, 2003 to the present, you have  
24 been active in AA. You also did an AA cell study. You  
25 have a certificate for that. And P. Noble, N-O-B-L-E,

1 said that you were a current chairman and member of the  
2 Board as of March 7th, 2007.

3 **INMATE BAIR:** Yes.

4 **DEPUTY COMMISSIONER LUSHBOOUGH:** You're still --  
5 So you are on the board and chairman now?

6 **INMATE BAIR:** Yes.

7 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. You have a  
8 certificate in effective communication in 2006, decision  
9 making and problem solving. You have a laudatory chrono  
10 for completing Women's Perspectives in 2006. You  
11 completed a 22 session course called the Four  
12 Agreements. I'm not sure I know what that means, Four  
13 Agreements?

14 **INMATE BAIR:** It was a course study that they  
15 offered at PIA during the morning for about an hour for  
16 about three weeks. It's the four agreements are to tell  
17 the truth, always do the best we can, don't take it  
18 personally, and don't make assumptions. It's a  
19 wonderful course. Absolutely wonderful course.

20 **DEPUTY COMMISSIONER LUSHBOOUGH:** It sounds like  
21 it. It sound like --

22 **INMATE BAIR:** It was a good course.

23 **DEPUTY COMMISSIONER LUSHBOOUGH:** -- it's pretty  
24 solid information to be thinking about.

25 **INMATE BAIR:** Yes.

1                   **DEPUTY COMMISSIONER LUSHBOOUGH:** Well, I saw a  
2 reference in your reports that you had completed 158  
3 correctional learning network courses. My understanding  
4 is that those are sometimes all on video and sometimes  
5 they are also people who are teaching; is that correct?

6                   **INMATE BAIR:** For the most part they're on video.

7                   **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay.

8                   **INMATE BAIR:** And we do the courses by watching  
9 the video and taking notes and, just to give you an  
10 example of what we've got here, this is January of 2006.  
11 And the first session starts out, it's an anger control  
12 course. And we start out at the first of the month.  
13 And they have these courses, say an hour on Monday and  
14 an hour on Wednesday and an hour on Saturday. And  
15 you'll watch these courses and take notes and at the end  
16 of the month, you'll turn your booklets in and they'll  
17 give you a certificate for doing these courses.

18                   **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. So do the  
19 booklets come back to you graded or marked?

20                   **INMATE BAIR:** Yes.

21                   **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. So you get  
22 some feedback too?

23                   **INMATE BAIR:** Just say for instance the gold  
24 writing is the instructor's writing.

25                   **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. Good, so

1 you get feedback on what's going on.

2 **INMATE BAIR:** Yes.

3 **DEPUTY COMMISSIONER LUSHBOOUGH:** All right.

4 **INMATE BAIR:** Excellent courses. Excellent  
5 course. I recommend them for everybody.

6 **DEPUTY COMMISSIONER LUSHBOOUGH:** Just looking at  
7 this, I would say that you have put a lot of time and  
8 effort into it also. I'm going to read some of the  
9 titles. I'm sure there are more that we could talk  
10 about, transitions, career, business basics, anger  
11 control, training, career transitions, dispute  
12 resolution, victim's awareness, let's save America, know  
13 thyself, healthy family and kids, stress management,  
14 anger management.

15 In the tech series, there were computers,  
16 cultural diversity, communications, learn to earn job  
17 success, and I think I got -- well, it goes on. There's  
18 a lot of certificates. I counted about 50 self-help  
19 certificates within this period of review.

20 **INMATE BAIR:** Yes, Ma'am.

21 **DEPUTY COMMISSIONER LUSHBOOUGH:** Since 2003. So  
22 you've done a lot of work.

23 **INMATE BAIR:** Yes.

24 **DEPUTY COMMISSIONER LUSHBOOUGH:** You had a  
25 laudatory chrono December 19th, 2005, for your

1 contributions both time and money to the MAC children's  
2 Christmas party. In May 20th, 2006, the MAC Mother's  
3 Day banquet. March 28th, 2006, family relations  
4 education enrichment. And we spoke of women's  
5 perspective. And there were also two certificates for  
6 FEMA topics. The emergency preparedness topics. I did  
7 note your Counsel presented this today. This  
8 certificate is not yet in the C-File. It's dated March  
9 the 20th, 2007. I'm sure it will be there soon.

10           **INMATE BAIR:** Yes.

11           **DEPUTY COMMISSIONER LUSHBOOUGH:** But we'll give  
12 this copy back to you.

13           **INMATE BAIR:** Thank you.

14           **DEPUTY COMMISSIONER LUSHBOOUGH:** And that was the  
15 victim's awareness one to six units. Also the most  
16 recent chronos which we received in late mail and we put  
17 on your Counsel's table as well, and I trust you've seen  
18 them now, March 7th, 2007, was a Bottle Stoppers, the  
19 most recent one. And that you attend all meetings,  
20 share your experiences, strength and hope with other  
21 members. Current chairman and a member of the steering  
22 committee. And perform your duties of this office very  
23 well by your examples to help ensure the group's  
24 continual success.

25           Also P. Noble on February 27th, 2007, noted your

1 participation during that particular quarter, which was  
2 the first quarter of this year. And that you continue  
3 to accumulate knowledge of the NA way to recovery. Is  
4 there anything else that perhaps I failed to mention  
5 that you've accomplished since our period of review  
6 started on July 25th of 2003 that you would like to  
7 bring to the Panel's attention at this time?

8           **INMATE BAIR:** I think you've pretty well covered  
9 it. Thank you. I think you've --

10           **DEPUTY COMMISSIONER LUSHBOOUGH:** Counsel, anything  
11 that --

12           **INMATE BAIR:** Other than listing every single  
13 chrono that I've accomplished, I think you've done a  
14 good job. Thank you.

15           **DEPUTY COMMISSIONER LUSHBOOUGH:** All right. Thank  
16 you.

17           **ATTORNEY DAVEY:** I think my client does do some  
18 self-study as indicated, reads books and whatnot,  
19 they're probably not documented line per line. But he  
20 tries to keep himself busy in a positive manner while  
21 he's incarcerated.

22           **DEPUTY COMMISSIONER LUSHBOOUGH:** Not to pile more  
23 work on you, please don't take it this way, but I'm going  
24 to suggest to you that if you don't get a date today and  
25 if you're doing self-study and books, it wouldn't hurt

1 to start a list of those books, you know, title, author,  
2 when you read it, and maybe just a short paragraph of  
3 what affected you, what touched you, what helped you.  
4 And then if you don't get a date today, by all means  
5 bring that information in to the Panel so that they can  
6 see that you have done these things as well.

7 **INMATE BAIR:** . Actually I can do that for you  
8 right now.

9 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. All right.

10 **ATTORNEY DAVEY:** It must have been four years in  
11 the Navy that got him organized.

12 **DEPUTY COMMISSIONER LUSHBOOUGH:** Very organized.  
13 I have to tell you, Mr. Bair, this is the first time  
14 this has ever happened when I've made that suggestion or  
15 recommendation. Mr. Bair, for the record, has compiled  
16 a number of composition books, two, three, four, five,  
17 six of them so far, and are these books -- or seven of  
18 them, that you have put your notes of your independent  
19 study in?

20 **INMATE BAIR:** Yes.

21 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. All right.  
22 What I'd like to ask you to do is this, if you would  
23 just leave them on the table when we go into recess, the  
24 Commissioner and I will go through them, take a look at  
25 them, and see what you've been doing. Like I said, it's

1 the first time I've ever suggested this and had someone  
2 already have it done.

3 **INMATE BAIR:** Thank you very much.

4 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. If there  
5 is -- that's fine. Thank you, sir. If there is nothing  
6 else, what we'll do at this point is go into the most  
7 recent psych evaluation prepared by Dr. Heather Mann,  
8 first names H-E-A-T-H-E-R, last name M-A-N-N, Ph.D. And  
9 the evaluation is dated November 3rd, 2006. And  
10 beginning on page four, apparently the prior Board had  
11 asked for an evaluation of jealousy as a factor in the  
12 commitment offense. And Dr. Mann writes as follows:

13 "In response to the Board's question of  
14 jealousy and his volatility in relationship based  
15 on his life crime an extensive discussion was  
16 conducted around the inmate's relationship  
17 history and his ability to maintain a healthy  
18 relationship with his current wife. There  
19 appears to be a theme in his early marriages that  
20 his expectations be followed by his partner.  
21 When his expectations weren't maintained to his  
22 satisfaction, the relationships ended.

23 "In discussion of the Inmate's marriages  
24 that have occurred since incarceration, this  
25 theme has gradually transitioned to a more mature

1 and cooperative stance in terms of relating to  
2 his partners. In his first marriage while he was  
3 in prison, they had only known each other for six  
4 months and had very few contacts. When he was  
5 unsatisfied with the issue of hygiene in the  
6 relationship, he attempted to resolve this  
7 through letter writing. When he felt that she  
8 was not able to have this conversation or modify  
9 her behavior in any way, the marriage was ended.

10 "Looking at this marriage with Isabel, the  
11 trend that begins to appear is that he slowly  
12 gets to know the woman for a longer period of  
13 time prior to the marriage."

14 You're currently married. How long did you know  
15 her before you got married?

16 **INMATE BAIR:** I met Valerie when she was 12 years  
17 old.

18 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay.

19 **INMATE BAIR:** And today she's 57.

20 **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay.

21 **INMATE BAIR:** And we got back together on April  
22 19th of 2001.

23 **DEPUTY COMMISSIONER LUSHBOOUGH:** Did you go to  
24 school together or were you in the neighborhood  
25 together?

1           **INMATE BAIR:** I was 17 years old, she was 12, and  
2 I knew her parents. And her parents and my parents were  
3 friends. And that's how I knew Valerie. That's how I'd  
4 come to know who she is.

5           **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay.

6           **INMATE BAIR:** And in April of -- actually it was  
7 March of 2001, I wrote a letter to her dad. I heard he  
8 was, had cancer and emphysema and wasn't feeling very  
9 well and I wrote him a letter. And she answered the  
10 letter for him and we started corresponding to each  
11 other. I sent her a visiting form. She started -- She  
12 came to see me and we fell in love and we got married in  
13 August, on August 10th, 2002.

14           **DEPUTY COMMISSIONER LUSHBOOUGH:** Okay. Thank you.

15           **INMATE BAIR:** You're welcome.

16           **DEPUTY COMMISSIONER LUSHBOOUGH:** With respect to  
17 the diagnostic impression, Dr. Mann offers on Axis I,  
18 Alcohol Dependence, In Institutional Remission;  
19 Amphetamine Dependence, In Institutional Remission, with  
20 no diagnosis on Axis II. And a Global Assessment of  
21 Functioning of 90.

22           Then Dr. Mann goes on to the assessment of  
23 dangerousness. I'm going to just summarize this, but as  
24 stated in the parole plan section, this Inmate has given  
25 significant priority to developing viable vocational

1 plans, housing, and ways to maintain his sobriety in the  
2 community. He has developed reasonable accommodations  
3 and vocational possibilities in three counties. His  
4 level of preparedness for parole is higher than that  
5 noted of other inmates in his similar situation. His  
6 work skills are varied and he appears to be employable  
7 in many different fields.

8 She does talk about insight. Insight into his  
9 life crime and demonstration of remorse are also two  
10 factors associated with success on parole. Inmate Bair  
11 makes a statement in his account of the crime to attest  
12 to his level of remorse regarding the offense. And she  
13 quotes you, "I have committed a crime to where there is  
14 absolutely nothing I will be able to do to make amends  
15 for what I've done. Yes, I'm sorry and ashamed and  
16 extremely sad that I murdered Ms. Atkins [sic] and  
17 destroyed Ms. Fomasi's life." End quote.

18 And she goes on then to talk about positive  
19 protective factors. And that has to do with your  
20 disciplinary history, of course, in some great degree.  
21 She states that your future risk for violence is below  
22 average. She doesn't say below average as compared to,  
23 so I'm not sure what she's talking about.

24 She does mention your six chronos and states that  
25 your assessment of dangerousness within a controlled

1 setting of an institution is seen as below average in  
2 comparison with other inmates. Assessment of  
3 dangerousness if released into the community is seen as  
4 below average in comparison with other inmates.

5 She then under her observation states:

6 "Excluding previous criminal history for  
7 nonviolent crimes, the only historical factor  
8 that is associated with dangerousness in the  
9 future are his problems that he had with alcohol  
10 and drugs. He appeared to have a considerable  
11 substance abuse history with his alcohol problems  
12 starting as early as age 10. These problems in  
13 combination with relationship factors led to his  
14 crime. Throughout his entire 22 years in prison,  
15 he has demonstrated an ability to refrain from  
16 alcohol and illegal drug use. He has developed a  
17 relapse prevention plan should any problems occur  
18 in the future.

19 "It is also believed that the work he has  
20 done to explore his commitment offense and the  
21 potential cause of that has led him to a place in  
22 his life where he is very motivated and has the  
23 skills to maintain his sobriety. In addition, he  
24 has just rejoined NA and it would be beneficial  
25 for him to continue with his participation in

1                   this particular group. His work ethic, ability  
2                   to adjust to institutional living, and his own  
3                   goals for self-improvement are likely to continue  
4                   during his period of incarceration and appear to  
5                   be sustainable upon parole.

6                   "The final issue of concern by the Board  
7                   in July of 2003 was the issue of jealousy as it  
8                   relates to the commitment offense. Previous  
9                   statements by the inmate described a jealous rage  
10                   as a contributing factor to the crime. During  
11                   this interview, there was extensive discussion of  
12                   his relationship history as it relates to his six  
13                   marriages.

14                   "From this discussion, it appears that the  
15                   inmate is aware that his three marriages prior to  
16                   incarceration were significantly impaired by his  
17                   own use of alcohol and drugs. He also  
18                   understands that during these relationships, he  
19                   felt the need to control the relationship. And  
20                   when his partners would not abide by his  
21                   expectations, he would leave the relationship.  
22                   This pattern continued during his fourth  
23                   marriage. He knew the individual for a short  
24                   time of -- period of time, six months, prior to  
25                   the marriage. He did not -- He did make an

1           attempt, which is a new behavior for him, to try  
2           to resolve his concerns through letter writing  
3           and open discussion.

4           "When this was not achieved to his  
5           satisfaction, the marriage ended. The last two  
6           relationships, in parens, his last divorce and  
7           his current marriage, close parens, are more  
8           indicative of new relationship skills learned on  
9           behalf of the inmate involving open  
10           communication, honesty, and being able to make  
11           mutual decisions. Based on the above points, it  
12           is important to note that jealousy has not been  
13           researched as a significant factor in  
14           contributing to dangerousness and future violence  
15           of inmates who parole.

16           "However, in light of the Board's  
17           concerns, the Inmate's self-help work over the  
18           years and his current relationship are suggestive  
19           of a level of maturation that is encouraging for  
20           his future. In conclusion, there appears to be  
21           no factors that would preclude routine release  
22           planning in this case."

23           With that, I will conclude the summary of the  
24           psych evaluation. Counsel, would you or your client  
25           care to make any comments on the psych evaluation at

1 this time or would you prefer to defer to closing?

2           **ATTORNEY DAVEY:** Commissioner, just a quick note.  
3 You had indicated that the Board had postponed  
4 previously to enable the psychology department to  
5 prepare new information, and that has been done. In  
6 addition to that, my client has put together a short  
7 synopsis of part of the additional things that the  
8 doctor was talking about and maybe just kind of  
9 encapsulates from pretty much birth to where he finds  
10 himself today in three pages. We'd like the  
11 Commissioners to review that during deliberation as  
12 well.

13           **DEPUTY COMMISSIONER LUSHBOOUGH:** All right, thank  
14 you. And we will.

15           **ATTORNEY DAVEY:** Thank you.

16           **DEPUTY COMMISSIONER LUSHBOOUGH:** We'll do so.  
17 Okay, Mr. Bair, I want to thank you for your attention.  
18 I'm going to ask you now to direct your attention to the  
19 Commissioner for the balance of the hearing, please.

20           **INMATE BAIR:** Thank you.

21           **DEPUTY COMMISSIONER LUSHBOOUGH:** All right.

22           **PRESIDING COMMISSIONER KUBOCHI:** Mr. Bair, rather  
23 than have me read something from a report, why don't you  
24 tell me what your parole plans are.

25           **INMATE BAIR:** My parole plans are if I'm to be. I

1 don't know whether I'm going to be picked up by a  
2 probation officer or not. But I'll parole to my wife in  
3 Roseville, California. Within a week of my parole, I  
4 intend to sign up for or check into the Laborers and  
5 Teamsters Unions of which I used to belong to. And I  
6 found out through communication with the unions that I  
7 can be reinstated with the union halls.

8 I have a parole -- I have a job offer from Mr.  
9 Michael Ogness at his driving school in Roseville. I  
10 have a job offer from the city of West Sacramento. My  
11 brother Duke Bair has offered to give me employment  
12 driving truck. My brother Lloyd Bair has offered to  
13 help me find employment. When I parole, I'm going to --  
14 my wife works at the DMV. She's going to help me get my  
15 class one chauffeur's license so I could drive truck if  
16 need be.

17 Let's see, I have parole plans for Sonoma County.  
18 I have help from the AARP. They've notified me that  
19 they would be willing to help me to find secure  
20 employment in Sonoma County and Tulare County. I have  
21 the Veterans Administration in Palo Alto that has  
22 offered to help me find employment. I have the veterans  
23 group in Tulare County that's run by Dan Britton that's  
24 going to help me find employment if I have to parole to  
25 Tulare County. Sonoma County is the county of my

1 commitment.

2                   Tulare County is the county of my last residence.  
3 I plan to -- I have the AA meeting places there in  
4 Roseville. I have an AA sponsor in Roseville. His name  
5 is Ralph Stevens. He lives in Citrus Heights. I have  
6 AA meeting places there in Santa Rosa. I have AA, all  
7 the AA meeting places there in Tulare County. I have 72  
8 hundred dollars in a savings account that if I'm having  
9 to parole to Sonoma or Tulare County, I will be able to  
10 rent an apartment and supply it with food and phone.  
11 Until I get my driver's license, I'll buy a bicycle and  
12 ride it back and forth to work.

13                   I have my family. I have friends that have  
14 offered to help me readjust when I return to society.  
15 That's about it.

16                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. It is  
17 9:50 and with Counsel's permission and the correctional  
18 officer, we'll take a break now in view of your client's  
19 issues. And we can stretch our legs, because we're  
20 going to head into the question session.

21                   **INMATE BAIR:** Yes.

22                   **PRESIDING COMMISSIONER KUBOCHI:** And closing  
23 statement, and I want you to be real comfortable.

24                   **INMATE BAIR:** Thank you.

25                   **PRESIDING COMMISSIONER KUBOCHI:** Okay.

ATTORNEY DAVEY: Thank you.

(Thereupon, a recess was held off the record.)

4 DEPUTY COMMISSIONER LUSHBOUGH: We're back on  
5 record.

6                   **PRESIDING COMMISSIONER KUBOCHI:** It's 9:55 and  
7 we're back on record in the parole consideration hearing  
8 of Clifford Bair. Mr. Bair, we're heading toward that  
9 portion of the proceedings in which questions are  
10 permitted. And before doing so, I'd like to state for  
11 the record that the Board has sent out notices pursuant  
12 to 30 --

13           **ATTORNEY DAVEY:** Commissioner, I hate to .  
14 interrupt. I waited for a pause. Support letters. I  
15 don't believe you've covered the support letters, and  
16 there are numerous support letters.

17 PRESIDING COMMISSIONER KUBOCHI: I was going to  
18 just read for the record that we're at that portion of  
19 3042 notices were sent out. And as a result of that --  
20 you know, Mr. Davey, what amazes me is that I don't need  
21 to follow any procedural ways because I find that  
22 attorneys such as you who are excellent put me on auto  
23 pilot. And I can just sit here and make an attempt to  
24 say anything and the next issue will be raised properly.  
25 And I'm glad you do, because I don't want to leave

1 anything out on any hearing. Because it's the Inmate  
2 here who has the expectations of having a fair hearing  
3 and everything considered. So thank you, Mr. Davey.

4 And in regard to those 3042 notices, the District  
5 Attorney's representative is here from Sonoma County.  
6 And what I'm going to do, Mr. Davey, in this case  
7 because I don't like.to -- I like to listen to what  
8 everybody is saying. And that what I'm going to do is  
9 at some point I'm going to simply list all the people in  
10 the letters. And it may not be in the normal procedure  
11 such as reading them all now, but I want to make sure  
12 that we thoroughly go over everything with Mr. Bair.  
13 But I guarantee you that this record will have a list of  
14 everybody who sent in a support letter. Is that  
15 agreeable?

16 **ATTORNEY DAVEY:** Thank you, Sir.

17 **PRESIDING COMMISSIONER KUBOCHI:** Okay. And like  
18 I say, my comment was not made in what you'd call  
19 scolding method.

20 **ATTORNEY DAVEY:** I understand.

21 **PRESIDING COMMISSIONER KUBOCHI:** It's simply an  
22 observation from my side. And I really appreciate it  
23 because I want to make sure that every issue on every  
24 case is covered appropriately. So if I forget anything  
25 else, you don't even need to apologize. You say excuse

1 me and just let her roll.

2 So therefore, what I'm going to do because I did  
3 not want to divert my attention to what your client was  
4 saying because I know he's done so much is at some point  
5 what I do for concise purposes and accuracy is what I do  
6 is I list the person, the basic information in the  
7 letter, such as friend, letter of support, company, et  
8 cetera. But I'm going to do that at some point in time  
9 because I want to listen to what your client says.

10 **ATTORNEY DAVEY:** Sure. Absolutely.

11 **PRESIDING COMMISSIONER KUBOCHI:** Thank you. So  
12 right now, Mr. Bair, we're going to go into questions.  
13 And like I says, this is, this covers all the factors of  
14 suitability. And I don't want you to think that we're  
15 re-trying your guilt or innocence, but out of necessity,  
16 some questions that may be asked go into a lot of stuff  
17 like before this, other relationships, et cetera.

18 **INMATE BAIR:** Yes.

19 **PRESIDING COMMISSIONER KUBOCHI:** Because they're  
20 all part of who you are today.

21 **INMATE BAIR:** Yes.

22 **PRESIDING COMMISSIONER KUBOCHI:** Okay?

23 **INMATE BAIR:** Yes.

24 **PRESIDING COMMISSIONER KUBOCHI:** But I don't want  
25 you to think it -- become defensive in that you might --

1 the questions are not indicative of any attitude of the  
2 speaker or any preconceived ideas, but it's simply for  
3 the purpose of obtaining information.

4 **INMATE BAIR:** Thank you.

5 **PRESIDING COMMISSIONER KUBOCHI:** Now, Mr. Bair,  
6 I'm going to have some questions here in regard to this  
7 crime that occurred in January of 1984. I'm going to  
8 back up the time clock a little bit. Just back up the  
9 chronological clock before January of '84. At that  
10 time, let's call it December of 1983. Your wife was  
11 Linda Bair; is that correct?

12 **INMATE BAIR:** Yes.

13 **PRESIDING COMMISSIONER KUBOCHI:** And by the way,  
14 please excuse -- I like to ask the questions while  
15 they're in my mind. And they might be out of sequence.  
16 Because I find, if I don't ask them while they're in my  
17 mind, I'm going to forget. In regard to your current  
18 wife, what is her name?

19 **INMATE BAIR:** Valerie.

20 **PRESIDING COMMISSIONER KUBOCHI:** Your current  
21 wife is Valerie and how did you meet her?

22 **INMATE BAIR:** I met her when she was 12 years old  
23 and I was 17. I was going to high school. I knew her  
24 mother and father. Her mother and father were friends  
25 of my parents.

1                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. Well,  
2 that's a little bit further back than I wanted to go.  
3 How did you reconnect on the contact in regard to  
4 leading to matrimony?

5                   **INMATE BAIR:** Her father was ill and I wrote him  
6 a letter in March of 2001. And he had her answer his  
7 letter for him. And Valerie and I started writing to  
8 each other. I mailed her a visiting form. She got  
9 approved to come and see me. We started visiting, and  
10 fell in love and got married in August 10th of 2002.

11                  **PRESIDING COMMISSIONER KUBOCHI:** Okay. Now going  
12 back now, you're very patient with me. I don't --  
13 Believe me, I'm not doing anything on purpose. A  
14 question hit my head and I've got to ask it, but it  
15 might not be in time sequence with the other question I  
16 might ask.

17                  Going back to December of 1983, it is the month  
18 before the homicide, Linda Bair was your wife; is that  
19 correct?

20                  **INMATE BAIR:** Yes.

21                  **PRESIDING COMMISSIONER KUBOCHI:** And how long had  
22 you been married to Linda Bair before December of '83?

23                  **INMATE BAIR:** Linda and I were together for 10  
24 years.

25                  **PRESIDING COMMISSIONER KUBOCHI:** And Linda Bair

1 was what number marriage?

2           **INMATE BAIR:** Third.

3           **PRESIDING COMMISSIONER KUBOCHI:** And how did you  
4 meet Linda?

5           **INMATE BAIR:** I went to high school with Linda.

6           **PRESIDING COMMISSIONER KUBOCHI:** And how old were  
7 you when you married Linda?

8           **INMATE BAIR:** Approximately 27 or 28.

9           **PRESIDING COMMISSIONER KUBOCHI:** And did you have  
10 any arguments with Linda?

11           **INMATE BAIR:** Lots of argument.

12           **PRESIDING COMMISSIONER KUBOCHI:** Okay. Within a  
13 year of December of '83, what was the topic of the  
14 arguments?

15           **INMATE BAIR:** Drugs and alcohol and adultery.

16           **PRESIDING COMMISSIONER KUBOCHI:** Okay. And  
17 looking back on that relationship now, clearly it ended  
18 in divorce. How much of the -- How much would you  
19 assess to you as the source of the arguments?

20           **INMATE BAIR:** Eighty percent.

21           **PRESIDING COMMISSIONER KUBOCHI:** Eighty percent.  
22 And back in January of '84, she left for Bodega Bay just  
23 before the homicide here. What was she going to Bodega  
24 Bay for?

25           **INMATE BAIR:** Her parents owned Diekman's Bay

1 Store there in Bodega Bay and she would work for them  
2 during the summer months and on weekends. And she made  
3 a trek to Bodega Bay on average about three weekends a  
4 month.

5 **PRESIDING COMMISSIONER KUBOCHI:** Now tell me  
6 about this incident involving, now that you mention  
7 Diekman's Bay Store related to Linda, tell me about this  
8 you driving your car, the vehicle into that store.

9 **INMATE BAIR:** Yes.

10 **PRESIDING COMMISSIONER KUBOCHI:** That was back in  
11 '82. What was that about?

12 **INMATE BAIR:** That was about I felt that her  
13 parents had too much influence on her. And I actually  
14 felt that they were destroying our marriage. And the  
15 only way that I had to take it out on them was I backed  
16 my pickup into the front doors of the store and broke  
17 the glass doors.

18 **PRESIDING COMMISSIONER KUBOCHI:** Okay. And going  
19 back to the time period shortly before January 20th,  
20 1984, if this homicide happened around January 20th,  
21 1984, how many days before did Linda go to Bodega Bay?

22 **INMATE BAIR:** I'm not sure I understand your  
23 question.

24 **PRESIDING COMMISSIONER KUBOCHI:** Yeah, if the  
25 homicide occurred at January 20th, 1984, how many days

1 before that did Linda leave Visalia to go up to Bodega  
2 Bay?

3           **INMATE BAIR:** Actually the homicide occurred on  
4 January 25th.

5           **PRESIDING COMMISSIONER KUBOCHI:** Okay.

6           **INMATE BAIR:** And she left two days prior.

7           **PRESIDING COMMISSIONER KUBOCHI:** Okay. That's  
8 what I ask questions because you have a good memory for  
9 all this information. So the homicide was January 25th;  
10 right?

11           **INMATE BAIR:** Yes.

12           **PRESIDING COMMISSIONER KUBOCHI:** And she left on  
13 the 20th?

14           **INMATE BAIR:** Yes.

15           **PRESIDING COMMISSIONER KUBOCHI:** Okay. And she  
16 took --

17           **INMATE BAIR:** Left on the 20th, probably a  
18 Friday, whatever Friday was. Maybe the 22nd or 23rd.

19           **PRESIDING COMMISSIONER KUBOCHI:** And she took the  
20 only vehicle that you and she owned?

21           **INMATE BAIR:** Yes.

22           **PRESIDING COMMISSIONER KUBOCHI:** And for those  
23 people who might look at this transcript and not know  
24 the distance between Visalia and Bodega Bay, what was  
25 the driving time if you went the speed limit between

1 Visalia And Bodega Bay?

2           **INMATE BAIR:** Four and a half to five hours.

3           **PRESIDING COMMISSIONER KUBOCHI:** Okay. And what  
4 was your urgency in going to Bodega Bay after she left?

5           **INMATE BAIR:** My reason for going to Bodega Bay  
6 was to see who she was having an affair with. I  
7 actually knew who she was having an affair with, but I  
8 just wanted to see it for myself.

9           **PRESIDING COMMISSIONER KUBOCHI:** Well, the issue  
10 of infidelity had been raised before January of '84;  
11 right?

12           **INMATE BAIR:** Yes.

13           **PRESIDING COMMISSIONER KUBOCHI:** Why steal a car  
14 to follow her this time?

15           **INMATE BAIR:** I don't really have the -- I can't  
16 give you really a good answer for that. It's just  
17 having to be at the time that I did it, you know, the  
18 time was at that time.

19           **PRESIDING COMMISSIONER KUBOCHI:** What was your  
20 state of mind?

21           **INMATE BAIR:** I was under the influence heavily.

22           **PRESIDING COMMISSIONER KUBOCHI:** Were you kind of  
23 emotionally upset?

24           **INMATE BAIR:** Yes.

25           **PRESIDING COMMISSIONER KUBOCHI:** What we would

1 call ticked off? Angry?

2           **INMATE BAIR:** I would be angry. Yes, I was  
3 angry. The problem that I had with her parents having  
4 so much influence over Linda was that I didn't think  
5 they were giving our marriage a chance and I was  
6 resentful towards them and her. Every time that we'd  
7 have a disagreement, she would get in the car and go to  
8 Bodega Bay. And it just came to the point where I'd had  
9 enough of it and I went to Bodega Bay to see who she was  
10 having an affair with.

11           **PRESIDING COMMISSIONER KUBOCHI:** How old was  
12 Linda at this time?

13           **INMATE BAIR:** She was approximately 36, 37.

14           **PRESIDING COMMISSIONER KUBOCHI:** What marriage  
15 was it for her?

16           **INMATE BAIR:** Third.

17           **PRESIDING COMMISSIONER KUBOCHI:** At this point in  
18 time, December 1983, January 1984, can you describe your  
19 alcohol consumption on a daily basis?

20           **INMATE BAIR:** Yes. Daily.

21           **PRESIDING COMMISSIONER KUBOCHI:** Okay. By the  
22 way, I saw in the probation report your statements to  
23 the probation department that you were -- that you were  
24 drinking about a pint of whiskey a day?

25           **INMATE BAIR:** Yes.

1 PRESIDING COMMISSIONER KUBOCHI: And that you  
2 were taking as many as 15 amphetamine or Benzedrine  
3 tablets?

4 INMATE BAIR: Yes.

5 PRESIDING COMMISSIONER KUBOCHI: And those  
6 tablets would be considered uppers?

7 INMATE BAIR: Yes.

8 PRESIDING COMMISSIONER KUBOCHI: That is a --

9 INMATE BAIR: Speed.

10 PRESIDING COMMISSIONER KUBOCHI: Enhance your  
11 nervous system?

12 INMATE BAIR: Yes.

13 PRESIDING COMMISSIONER KUBOCHI: Okay. And  
14 there's a statement in the probation report that you  
15 would take these tablets to level off the effect of  
16 alcohol?

17 INMATE BAIR: Yes.

18 PRESIDING COMMISSIONER KUBOCHI: Which is known  
19 as a depressant.

20 INMATE BAIR: Yes.

21 PRESIDING COMMISSIONER KUBOCHI: Is that correct?  
22 Depressant on the central nervous system not your  
23 emotions; is that correct?

24 INMATE BAIR: I think alcohol has a lot to do  
25 with your emotions also.

1                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. And using  
2 the timeframe between January 20th and January 25th, can  
3 you tell me about your alcohol or drug consumption on  
4 these days?

5                   **INMATE BAIR:** I'm not sure what dates you quoted  
6 but I --

7                   **PRESIDING COMMISSIONER KUBOCHI:** January 20th,  
8 '84.

9                   **INMATE BAIR:** January 20th, '84, and January 25th  
10 of '84?

11                  **PRESIDING COMMISSIONER KUBOCHI:** Yeah.

12                  **INMATE BAIR:** When I left Visalia to go to Bodega  
13 Bay, I had been up for a couple of days. Probably two  
14 days.

15                  **PRESIDING COMMISSIONER KUBOCHI:** And why is that?

16                  **INMATE BAIR:** Without sleep.

17                  **PRESIDING COMMISSIONER KUBOCHI:** But why is that?

18                  **INMATE BAIR:** Just being stoned and loaded.

19                  **PRESIDING COMMISSIONER KUBOCHI:** Okay.

20                  **INMATE BAIR:** What was my alcohol consumption?

21                  **PRESIDING COMMISSIONER KUBOCHI:** I'm just asking  
22 a question. I'm not accusing you of anything.

23                  **INMATE BAIR:** No, I'm just trying to answer the  
24 question you want me to answer.

25                  **PRESIDING COMMISSIONER KUBOCHI:** Yeah.

1                   **INMATE BAIR:** It was steady. I drank constantly.

2                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. And as I  
3 understand what you've told me so far, after Linda left.

4                   **INMATE BAIR:** Yes.

5                   **PRESIDING COMMISSIONER KUBOCHI:** Your purpose in  
6 going up to Bodega Bay to see her in a -- to catch her  
7 in a relationship with another male; is that correct?

8                   **INMATE BAIR:** Yes.

9                   **PRESIDING COMMISSIONER KUBOCHI:** We know that  
10 Mrs. Aiken died. We know that you went into her house.  
11 When did you switch over from being concerned about  
12 Linda Bair and then ending up in Linda -- I mean, Mrs.  
13 Aiken's house?

14                   **INMATE BAIR:** If you don't mind, I'd like to read  
15 you something if you don't mind.

16                   **PRESIDING COMMISSIONER KUBOCHI:** No, I want to --  
17 I don't want something read. I want you to tell me in  
18 your own words.

19                   **INMATE BAIR:** Well, these are my words.

20                   **PRESIDING COMMISSIONER KUBOCHI:** No, I want you  
21 to tell me without reading.

22                   **INMATE BAIR:** You want to know how did Mrs.  
23 Aikens get confused with Linda?

24                   **PRESIDING COMMISSIONER KUBOCHI:** No. When you  
25 left Visalia.

1                   **INMATE BAIR:** Yes.

2                   **PRESIDING COMMISSIONER KUBOCHI:** I'm going to  
3 call it a target -- the target of your concerns. The  
4 object of your concern was Linda.

5                   **INMATE BAIR:** Yes.

6                   **PRESIDING COMMISSIONER KUBOCHI:** Why did it  
7 switch over to Ms. Aiken and her house?

8                   **INMATE BAIR:** The answer is right here if you'd  
9 let me read it to you.

10                  **PRESIDING COMMISSIONER KUBOCHI:** No, you tell me  
11 in your own words. You're going to be given an  
12 opportunity to address this Panel and you can read  
13 anything you want at that time.

14                  **INMATE BAIR:** Okay. Actually I was waiting for  
15 Linda to come back from Lake Tahoe with her mother and  
16 whoever she went to Lake Tahoe with. And she never came  
17 back. And I decided I was going to leave Bodega Bay.  
18 And I walked across the street and bought a hamburger  
19 and French fries and a sandwich. And I walked over --  
20 and a six-pack of beer.

21                  I walked over to Mrs. Aiken's yard and I sat down  
22 in her yard and I was eating my lunch. And Mrs. Aiken  
23 was outside walking in her yard and I saw them drive by  
24 with the pickup that I'd destroyed. And I finished my  
25 lunch and I walked over and I put my arm around Mrs.

1 Aiken and I walked her into the house. And I sat her  
2 down in the chair and I says Mrs. Aikens, I need to  
3 borrow your car. She said you can't have my car. And  
4 that's when I ripped the phone out of the wall and  
5 that's when I tied Mrs. Aikens up.

6 And then Mrs. Fomasi arrived. And I invited her  
7 into the house and had her lay down on the floor in  
8 between the bedroom and the living room and I tied Mrs.  
9 Fomasi up. And Mrs. Aiken's car keys were in a little  
10 bowl right there by the door. I walked out to the  
11 garage and I started her car up and I turned around and  
12 back in and Mrs. Fomasi was untied. So I tied Mrs.  
13 Fomasi back up. And I got Mrs. Aiken's car, and I left.

14 **PRESIDING COMMISSIONER KUBOCHI:** At the  
15 preliminary hearing of this case, Mrs. Fomasi testified  
16 and for Counsel's edification, it's page six of the  
17 probation report, the probation report noticed that in  
18 looking at the records from Sonoma County that Mrs.  
19 Fomasi testified at the preliminary hearing.

20 At page 11 of that transcript of the preliminary  
21 hearing it said that, quote, you pulled a gun and told  
22 her to lay down on the floor end quote. And that you  
23 also testified that you said, quote, I'm going to burn  
24 you guys up, unquote. She testified to that. Were you  
25 contemplating burning the house with those people in it?

1           **INMATE BAIR:** No.

2           **PRESIDING COMMISSIONER KUBOCHI:** Why did you make  
3 the statement?

4           **INMATE BAIR:** You have to remember, Mrs. Fomasi  
5 has an IQ of 57, and she testified about a lot of things  
6 that wasn't true.

7           **PRESIDING COMMISSIONER KUBOCHI:** Okay. Thank  
8 you. I have no further questions.

9           **INMATE BAIR:** You're welcome.

10          **PRESIDING COMMISSIONER KUBOCHI:** And Commissioner  
11 Lushbough, do you have any questions?

12          **DEPUTY COMMISSIONER LUSHBOUGH:** No, thank you.

13          **PRESIDING COMMISSIONER KUBOCHI:** Sir, at this  
14 time, the District Attorney is going to be permitted to  
15 ask questions of this Panel not directly at you. Your  
16 answers are to the Panel.

17          **INMATE BAIR:** Okay.

18          **PRESIDING COMMISSIONER KUBOCHI:** Not at the DA's  
19 office. Counsel, do you have any questions of this  
20 Panel?

21          **DEPUTY DISTRICT ATTORNEY ABRAMS:** I have a few  
22 questions of the Inmate not of the Panel.

23          **PRESIDING COMMISSIONER KUBOCHI:** No, the  
24 questions are to the Panel.

25          **DEPUTY DISTRICT ATTORNEY ABRAMS:** I see. And

1 then they're addressed to the Inmate?

2 PRESIDING COMMISSIONER KUBOCHI: Yes.

3 DEPUTY DISTRICT ATTORNEY ABRAMS: All right.

4 Well, I think an important question was just touched on.  
5 I would want to know whether Mr. Bair made any  
6 statements while at the Aiken residence that he was  
7 going to burn the place down or any words to that  
8 effect.

9 PRESIDING COMMISSIONER KUBOCHI: I've asked and  
10 he's denied that.

11 DEPUTY DISTRICT ATTORNEY ABRAMS: And he's denied  
12 -- well, he's denied what she said about we're going to  
13 burn you up. But I don't know if he blanketly denied  
14 any statements regarding burn the house down.

15 PRESIDING COMMISSIONER KUBOCHI: That's a fair  
16 question. Did you make any statements about burning  
17 anything?

18 INMATE BAIR: No.

19 DEPUTY DISTRICT ATTORNEY ABRAMS: I would want to  
20 know from Mr. Bair, the pickup truck that he stole in  
21 Visalia to drive to Bodega Bay, did he at some point  
22 burn or set that truck ablaze, set it on fire?

23 PRESIDING COMMISSIONER KUBOCHI: The vehicle you  
24 took in Visalia, did you burn that vehicle?

25 INMATE BAIR: Yes.

1 DEPUTY DISTRICT ATTORNEY ABRAMS: And why did he  
2 burn the vehicle?

3 PRESIDING COMMISSIONER KUBOCHI: Why?

4 INMATE BAIR: Why did I do it?

5 PRESIDING COMMISSIONER KUBOCHI: Yes.

6 INMATE BAIR: Just to destroy it. To get rid of  
7 my fingerprints.

8 PRESIDING COMMISSIONER KUBOCHI: Why do that if  
9 your purpose in leaving Visalia was to talk to your wife  
10 about her affair?

11 INMATE BAIR: Because I knew I wasn't going to be  
12 able to drive a stolen pickup down the highway. So the  
13 only thing I knew to do was just to get rid of it.

14 PRESIDING COMMISSIONER KUBOCHI: Okay. Why did  
15 you check into the hotel under false name?

16 INMATE BAIR: Actually, I always do when I enter  
17 a motel is just check in under an assumed name. I  
18 always have. It's just kind of a joke.

19 PRESIDING COMMISSIONER KUBOCHI: Okay. Counsel  
20 do you have any other questions?

21 DEPUTY DISTRICT ATTORNEY ABRAMS: Just a couple.  
22 The record indicates in the probation report that when  
23 Mr. Bair checked out of the particular motel after  
24 spending two nights there, paying for two nights, that  
25 he took with him all of the trash liners, the garbage

1 bags and things of this nature in the motel. I just  
2 wonder why he did that?

3 **PRESIDING COMMISSIONER KUBOCHI:** Why did you take  
4 the trash liners out of the motel room that you stayed  
5 in?

6 **INMATE BAIR:** I just cleaned up the motel room  
7 and I just took the garbage bags to the trash. I just  
8 threw them away. I was just cleaning up the room.

9 **PRESIDING COMMISSIONER KUBOCHI:** That's his  
10 answer.

11 **DEPUTY DISTRICT ATTORNEY ABRAMS:** When Mr. Bair  
12 set out from Visalia to go to Sonoma County, Bodega Bay,  
13 was he in possession of shotgun shells?

14 **PRESIDING COMMISSIONER KUBOCHI:** That's a valid  
15 question, sir. Did you have shotgun shells on you when  
16 you left your home in Visalia shortly after January  
17 20th, 1984?

18 **INMATE BAIR:** Yes.

19 **DEPUTY DISTRICT ATTORNEY ABRAMS:** Why?

20 **PRESIDING COMMISSIONER KUBOCHI:** Why did you have  
21 shotgun shells?

22 **INMATE BAIR:** I had a shotgun with me.

23 **DEPUTY DISTRICT ATTORNEY ABRAMS:** What was Mr.  
24 Bair intending to do with the shotgun?

25 **INMATE BAIR:** I didn't have a clue. I have no

1 idea.

2                   **DEPUTY DISTRICT ATTORNEY ABRAMS:** Aside from  
3 Linda Bair, who else was Mr. Bair angry with when he set  
4 out for Sonoma County?

5                   **PRESIDING COMMISSIONER KUBOCHI:** If anybody.  
6 Were you angry at anybody else besides Linda Bair, your  
7 wife, when you left Visalia?

8                   **INMATE BAIR:** No.

9                   **DEPUTY DISTRICT ATTORNEY ABRAMS:** Is it true that  
10 Mr. Bair had a, prior to the homicide and the related  
11 crimes, Mr. Bair had a conviction of possessing a loaded  
12 sawed-off shotgun; is that correct?

13                   **PRESIDING COMMISSIONER KUBOCHI:** When I read your  
14 record, there was an arrest and conviction for  
15 possession of a sawed-off --

16                   **INMATE BAIR:** In 1975.

17                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. And that  
18 was true?

19                   **INMATE BAIR:** Yes.

20                   **DEPUTY DISTRICT ATTORNEY ABRAMS:** Was Mr. Bair  
21 aware that Ms. Aiken, the homicide victim, was 86 years  
22 of age at the time of his conduct towards her which led  
23 to her death?

24                   **PRESIDING COMMISSIONER KUBOCHI:** Did it appear to  
25 you that Ms. Aiken was an elderly woman?

1                   **INMATE BAIR:** Yes.

2                   **DEPUTY DISTRICT ATTORNEY ABRAMS:** At any time  
3 during Mr. Bair's physical treatment, assault on Ms.  
4 Aiken, did he question what he was doing? Did he try to  
5 stop himself from that? Did he think he was harming or  
6 killing an elderly woman?

7                   **PRESIDING COMMISSIONER KUBOCHI:** Did you  
8 contemplate at any time stopping what you were doing?

9                   **INMATE BAIR:** No.

10                  **PRESIDING COMMISSIONER KUBOCHI:** Why not?

11                  **INMATE BAIR:** Attitude.

12                  **PRESIDING COMMISSIONER KUBOCHI:** Okay.

13                  **INMATE BAIR:** I had a horrendous attitude.

14 Awful.

15                  **PRESIDING COMMISSIONER KUBOCHI:** Okay. Thank you  
16 for your answer.

17                  **INMATE BAIR:** You're welcome.

18                  **DEPUTY DISTRICT ATTORNEY ABRAMS:** Just a couple  
19 more questions. I'm just wondering what Mr. Bair was  
20 intending to do at the time to Linda Bair if he had  
21 found her in Bodega Bay?

22                  **PRESIDING COMMISSIONER KUBOCHI:** Did you have any  
23 preconceived ideas in your head as to what would you do  
24 or what would happen if you confronted your wife Linda  
25 in Bodega Bay?

1           **INMATE BAIR:** No, I didn't.

2           **DEPUTY DISTRICT ATTORNEY ABRAMS:** The record  
3 indicates that Mr. Bair has a number of prior criminal  
4 convictions prior to the circumstances that led to the  
5 commitment offenses. I'm just wondering if Mr. Bair at  
6 any time after the incident that he told us about where  
7 he backed the vehicle into the apparently the parents of  
8 Linda Bair's business, all the fighting that he had with  
9 Ms. Bair, the prior two convictions, I believe, for  
10 driving under the influence of alcohol, the possession  
11 of a sawed-off shotgun, did he make any efforts to  
12 change, to modify, improve his behavior?

13           **PRESIDING COMMISSIONER KUBOCHI:** Basically during  
14 the last two years of your marriage with Linda --

15           **INMATE BAIR:** Yes.

16           **PRESIDING COMMISSIONER KUBOCHI:** Did you enroll  
17 in or receive the services of any therapy?

18           **INMATE BAIR:** No.

19           **PRESIDING COMMISSIONER KUBOCHI:** Or therapist?

20           **INMATE BAIR:** I went to a 30-day alcoholic rehab.

21           **PRESIDING COMMISSIONER KUBOCHI:** As part of the  
22 conviction for DUI?

23           **INMATE BAIR:** As part of the conviction of the  
24 vandalism.

25           **PRESIDING COMMISSIONER KUBOCHI:** Okay.

1                   **INMATE BAIR:** The Bodega Bay store.

2                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. The  
3 Bodega Bay store that -- yes, the alcohol rehab, it's  
4 right in your probation report.

5                   **INMATE BAIR:** Yes.

6                   **PRESIDING COMMISSIONER KUBOCHI:** You were ordered  
7 to do that.

8                   **INMATE BAIR:** Yes.

9                   **PRESIDING COMMISSIONER KUBOCHI:** And you did.

10                  **INMATE BAIR:** Yes.

11                  **DEPUTY DISTRICT ATTORNEY ABRAMS:** Another  
12 question for Mr. Bair. In terms at any time during his  
13 physical conduct toward Ms. Aiken that led to her death,  
14 did Ms. Aiken, was she crying? Did she beg him to stop,  
15 to leave her alone?

16                  **PRESIDING COMMISSIONER KUBOCHI:** Did Ms. Aiken at  
17 any time you were in her home after confronting her, did  
18 you -- did she speak to you?

19                  **INMATE BAIR:** After she said that I couldn't  
20 borrow her car?

21                  **PRESIDING COMMISSIONER KUBOCHI:** Yes.

22                  **INMATE BAIR:** Mrs. Aiken didn't speak to me. She  
23 did not say a word to me.

24                  **PRESIDING COMMISSIONER KUBOCHI:** Was she alive?

25                  **INMATE BAIR:** Yes.

1                   **PRESIDING COMMISSIONER KUBOCHI:** Okay. How about  
2 Ms. Fomasi? Did she say anything after you confronted  
3 her and realized that Ms. Aiken has been tied up?

4                   **INMATE BAIR:** She didn't say anything to me.

5                   **PRESIDING COMMISSIONER KUBOCHI:** Okay.

6                   **INMATE BAIR:** Mrs. Fomasi didn't.

7                   **PRESIDING COMMISSIONER KUBOCHI:** Okay.

8                   **DEPUTY DISTRICT ATTORNEY ABRAMS:** That's all I  
9 have.

10                  **PRESIDING COMMISSIONER KUBOCHI:** Thank you. Mr.  
11 Davey, do you have any questions of your client?

12                  **ATTORNEY DAVEY:** No, Sir, I have no further  
13 questions of my client.

14                  **PRESIDING COMMISSIONER KUBOCHI:** Now, Mr. Bair,  
15 we're headed into that phase of the hearing in which the  
16 District Attorney is allowed to make a statement  
17 followed by Mr. Davey and then you. And so because you  
18 have some health and medical issues, I just want you to  
19 be ready and to just try to catch yourself. There have  
20 been various times during this hearing that you've  
21 become emotional.

22                  I want you to be satisfied that you can tell us  
23 why you believe you're suitable for parole when you are  
24 given that chance, and I am going to allow you to say  
25 anything either spontaneously or to read anything. Do

1 you understand that, sir?

2           **INMATE BAIR:** Yes, Sir. Thank you.

3           **PRESIDING COMMISSIONER KUBOCHI:** Okay. Counsel,  
4 on behalf of the Sonoma County DA's office, your closing  
5 statement.

6           **DEPUTY DISTRICT ATTORNEY ABRAMS:** Yes. Thank  
7 you, Mr. Commissioner. Just briefly. I think the facts  
8 surrounding the circumstances of the commitment offense  
9 are well documented in the record. I can say that I was  
10 not the trial attorney in this case, but I had joined  
11 the Sonoma County District Attorney's office at the time  
12 and discussed the facts of the case with the trial  
13 attorney, a Deputy District Attorney David Dunn. And  
14 other, I and other members of the office were  
15 particularly disturbed by the factors of this case.

16           Among other reasons, the fact that Mr. Bair  
17 focused on an 86-year-old woman who was completely  
18 innocent of any wrongdoing. She apparently was a very  
19 well liked and respected figure in the community. A  
20 woman who had never provoked Mr. Bair in any fashion.

21           The circumstances that led to her death had to be  
22 certainly considerable suffering and traumatic shock  
23 which led to her death. The other crimes are also a  
24 real puzzle. The stealing of the pickup truck to drive  
25 to the town of Bodega Bay. Why he did that. Why he

1 then stole Ms. Aiken's car. Why he stole the boat.  
2 What did he intend to do with Ms. Linda Bair had he  
3 encountered her in Bodega Bay. Why he had possession of  
4 shotgun shells having previously been convicted of  
5 possessing a loaded and sawed-off shotgun. Why he  
6 needed to treat the victim in such a callous manner that  
7 lacked any empathy towards another human being let alone  
8 a woman of that age, causing her such a tormented and  
9 violent death. Why these crimes continued over a  
10 several day period without Mr. Bair ever coming to grips  
11 with himself and being able to stop rather than just, I  
12 don't know if in his own mind he excuses his conduct  
13 because he believes that he was under the influence of  
14 alcohol and/or drugs.

15 The real problem I have, Mr. Bair certainly  
16 states that he is remorseful for the crimes, really  
17 regrets that. But I'm sure the Board hears that in  
18 every case. But whether Mr. Bair truly feels remorse is  
19 something only he knows for certain. But the question  
20 certainly that I have in reviewing all the records and  
21 documents here and in listening and observing Mr. Bair  
22 here today is whether he has a true understanding, a  
23 real understanding as to why he committed these crimes.  
24 Why he had the anger, the hostility that led to this  
25 several day outburst.

1           The question that was put to him about his  
2 relationship with Ms. Bair and how that got transferred  
3 to Ms. Aiken, and I think it's telling that Mr. Bair's  
4 response was he simply wanted to read something into the  
5 record rather than stating something that came from  
6 inside him. What he really feels.

7           So I haven't really heard anything or read  
8 anything that would help me or tell me, I think the  
9 rational observer that Mr. Bair other than stating that  
10 he has remorse for these crimes, whether he has a true  
11 understanding of why he did that. And until that time,  
12 I think that there's going to be a complete puzzle of  
13 what was going on there. And I think without question  
14 representing the Sonoma County District Attorney's  
15 office, we would certainly oppose any release date for  
16 Mr. Bair in that he, we truly believe that he represents  
17 an unreasonable risk of harm to society. I'd submit it.

18           **PRESIDING COMMISSIONER KUBOCHI:** Thank you for  
19 your comments. Mr. Davey.

20           **ATTORNEY DAVEY:** Yes, Sir, Commissioner, thank  
21 you. I don't believe there's any question at least in  
22 my mind that Mr. Bair is extremely remorseful for the  
23 crime for which he committed against these two women,  
24 specifically the traumatic death of Ms. Aiken and the  
25 traumatic injuries and emotional injuries brought upon

1 Ms. Fomasi, and he will address those specifically in  
2 his closing. But he does take full responsibility for  
3 the crime.

4 I believe he indicated, and I believe it's  
5 supported by the record, that he did confess to the  
6 crime and went forward with full participation in the  
7 case with the investigators and cleared the matter I  
8 believe without a trial. I think that's basically  
9 speaks some volumes about his situation at that point in  
10 time.

11 Additionally, he fully admits he was an alcoholic  
12 and a drug abuser during those periods of time. He will  
13 address those more in detail in his closing. But it's  
14 my understanding, and I'm not an expert. I'm not a  
15 medical expert or psychology expert, but it's my  
16 understanding that mixing alcohol and amphetamines is  
17 probably one of the most dangerous combinations that  
18 there is.

19 Because you have the upper effect of the  
20 amphetamine which will keep you active for days, weeks  
21 on end. You have the alcohol which is a depressant  
22 which, you know, basically smoothes out the ups and then  
23 between the two there's periods of time where people are  
24 basically totally out of control. And this may have  
25 happened during a period of time when Mr. Bair was out

1 of control. I believe his statements to the Board are  
2 honest, correct.

3 In response to the District Attorney's why  
4 questions, I believe that's one reason why. And  
5 basically Mr. Bair will address that more eloquently in  
6 his closing statement. That's what brought him here.  
7 Additional factors that the Board has to address are  
8 what type of background Mr. Bair had before he came into  
9 custody. First off, he indicates that he did have a  
10 good family life up to a point. He was a high school  
11 graduate. He was working in the community on various  
12 union jobs, Teamsters and I believe there's mention of  
13 plumber, underground gas work. So he's got good work  
14 experience. And that certainly is of concern to all  
15 parties.

16 Should he be released on parole, he's more than  
17 willing and physically able to work at some type of job.  
18 He may not be able to be the heavy equipment operator he  
19 was when he was in his 40s, but everybody has issues  
20 that they can deal with.

21 Coming into the correctional system on the murder  
22 of Ms. Aiken, he had amassed some criminal history. He  
23 had no juvenile history, but he amassed some concerning  
24 factors as prior arrests and/or convictions for not the  
25 least of concern was the shotgun that the District

1 Attorney's office mentioned possession of a loaded  
2 shotgun in a vehicle, I believe, and vehicle vandalism  
3 which is concerning because that's basically a rage  
4 issue. I think he was -- he testified that he was  
5 irritated and upset and mad at his in-laws for  
6 attempting to affect the relationship that he and his  
7 current wife Linda at that point in time. That was one  
8 of the reasons he was in Bodega Bay when this all  
9 consummated in the untimely death of Ms. Aiken.

10 The post-conviction factors gone into this  
11 morning I think are certainly reviewing the things that  
12 have happened since the last hearing in '03 only touch  
13 the surface. I believe my client will at the  
14 appropriate time present the Board with a full packet of  
15 what he believes is important in his rehabilitation over  
16 the last 23, 24 years. He has done pretty much  
17 everything that the Board has asked him to do. He's  
18 virtually remained disciplinary free. I think only one  
19 115 in his history and that was an administrative 115  
20 for smoking. He's certainly given up smoking since then  
21 for various other reasons including the rules of no  
22 tobacco behind the walls and for his medical reasons.

23 But, the 128 which was recited into the record by  
24 the Commissioner this morning was discussed, and I  
25 believe there's paperwork behind that to explain what

1 the situation was. He doesn't seem to be the type of  
2 person to me that would want to disrespect anyone. He's  
3 been very respectful to me. To my knowledge, he's been  
4 respectful to staff. He's been respectful with the  
5 District Attorney this morning and with the Panel. And  
6 he presents as an individual that is educated. He is  
7 trying to do what he can to position his potential  
8 parole. He believes he is suitable for parole at this  
9 point in time.

10           And I would cite several factors that are of  
11 concern to the Board. His vocations coming into prison  
12 have been discussed. Since he's been down, he has  
13 established an extremely good work record. He has  
14 certificates in various trade groups, including a number  
15 of year in PIA metal shop with the appropriate welding  
16 certificates at Folsom State Prison prior to his  
17 transfer to DVI, which I believe was a non -- it was a  
18 transfer that he didn't really request, but because of  
19 realignment of Folsom, they've transferred a lot of  
20 their folks out. But he has done what he can here.  
21 He's in the warehouse. He's getting good write-ups over  
22 there. He's earning certificates in the warehousing  
23 inventory control, and all those important factors  
24 relating to maintenance of supplies and whatnot that are  
25 necessary in the facility.

1 aware that the Board can parole him to pretty much any  
2 county in California, and his preference would be  
3 certainly Placer County with his wife in Roseville.

4 He's got a job there. He's got contacts with the  
5 union. He's got an AA sponsor in Roseville. He's ready  
6 to transition into that program once he's found suitable  
7 for parole. The support letters that I found in the  
8 packet are very indicative of the work that he and his  
9 wife have been doing setting him up in the community not  
10 only the AA program but the job offer from the driving  
11 school, signed by Mike Ogness.

12 Another support letter signed by Mike and his  
13 wife relating to potential release. A job offer or at  
14 least a consideration for a job offer with Woodmart  
15 Products in Sacramento. Various letters from the  
16 Veterans Administration with the programs that they can  
17 provide for him in the community. West Sacramento  
18 employment potential, Sacramento works. The list goes  
19 on and on. There's letters from his brothers in here  
20 relating to housing, jobs, and certainly his wife's  
21 letter is very telling as to what she can provide for  
22 him. So he's not going to be somebody that just walks  
23 out in the community dry without a job. Without family  
24 support or without an ability to function in the free  
25 community.

1       Lastly I'd like to address the psychological  
2 report. I'm not going to read it into the record in  
3 detail, but I would note that there are some very  
4 telling things in the psych report. And one of the  
5 issues the prior, I guess, the prior Board was concerned  
6 about was what were the precipitating factors that  
7 consummated in the life crime and Mr. Bair being  
8 incarcerated for the last 24 years. It is very clear  
9 that he had as stated prior and the doctor goes into  
10 great deal about his drug and alcohol problem.

11       As far as risk assessment as we speak and as the  
12 doctor evaluated him not only in this one but Dr., I  
13 believe, Rikers, in the prior evaluation that was done  
14 in '06, about six months prior, indicates that it's  
15 their belief that he would be a low risk of violence or  
16 dangerousness as compared to other inmates whether  
17 inside or outside the institution. There's always the  
18 proviso in the reports to paraphrase that if he remains  
19 clean and sober and participates in the 12-step program  
20 or something similar.

21       I believe the reports are indicative of my  
22 client's ability to participate in the free community.  
23 In the last line of Dr. Mann's report, it indicates over  
24 the years and his current relationship vis-à-vis his  
25 wife are suggest... of a level of maturation that is

1 encouraging for his future. In conclusion, there  
2 appears to be no factors that would preclude routine  
3 release planning in this case.

4 So what we have is we've got Mr. Bair who had a  
5 somewhat tumultuous maybe three or four years prior to  
6 the life crime, I'm guessing there. A lot of alcohol  
7 abuse, a lot of drug abuse. But as I understand it, he  
8 was still able to function. He was able to work. He  
9 was able to provide for himself or his family up until  
10 the point where the familial relationship broke down and  
11 he took off in a stolen vehicle to chase his wife to  
12 find out what the heck was going on up there in Sonoma  
13 County or Bodega Bay, Sonoma County.

14 He had a prior relationship, as I understand it,  
15 with the victim. He had done some work for her. What  
16 type of work it was is sort of unclear, but he did have  
17 a passing relationship with this elderly lady. And my  
18 guess is he thought he could probably talk her out of  
19 borrowing her car and just driving down the road and  
20 none of this would ever happen. He was in a situation  
21 where he'd been, I believe he indicated he'd been up for  
22 two or three days on amphetamines, again, amped up with  
23 certain criteria to any normal person is pretty much not  
24 easily understood. I'm speaking of the normal person  
25 .... using amphetamines and alcohol back to back.

1           My client has matured. He has learned his  
2 lesson. He has rehabilitated. He is in a position as  
3 we speak to be paroled into the community and that is  
4 his request and my request. Thank you.

5           PRESIDING COMMISSIONER KUBOCHI: Thank you.

6           DEPUTY DISTRICT ATTORNEY ABRAMS: Pardon me. I  
7 just had one very minor correction and perhaps I  
8 misunderstood Counsel. I believe he said there was  
9 admissions and confession, there was no trial. There  
10 was a trial, a jury trial. Excuse me.

11           ATTORNEY DAVEY: There was a confession but  
12 later.

13           DEPUTY DISTRICT ATTORNEY ABRAMS: Right. A minor  
14 thing.

15           PRESIDING COMMISSIONER KUBOCHI: Well, we're not  
16 re-trying --

17           DEPUTY DISTRICT ATTORNEY ABRAMS: Right.  
18 Exactly. I just want to be clear.

19           PRESIDING COMMISSIONER KUBOCHI: -- whatever  
20 Counsel says. We have a record of what happened. Thank  
21 you.

22           ATTORNEY DAVEY: I stand corrected.

23           PRESIDING COMMISSIONER KUBOCHI: It's minor. We  
24 understand. No problem. Okay, your turn.

25           INMATE BAIR: Thank you, Sir, very much. I'd

1 like to ask the District Attorney if he received the  
2 letter that I wrote to the DA in Sonoma County.

3                   **PRESIDING COMMISSIONER KUBOCHI:** You can say what  
4 you said. I don't want him participating any more. He  
5 has a limited role here. I don't want this to break  
6 down into anything that appears to be adversarial.

7                   **INMATE BAIR:** Thank you, Sir. This is a letter  
8 that I wrote to the District Attorney of Sonoma County.  
9 I am writing you today, and this is 11/20/2005.

10                  "I am writing you today to apologize to  
11 you. I want you to know how sorry I am for the  
12 crime that I committed that caused the death of  
13 Mrs. Aikens and for the trauma I put Mrs. Fomasi  
14 through. I'm sorry for the pain and the sadness  
15 that I've caused the city of Bodega Bay. I'm  
16 sorry for the pain and sadness I have caused my  
17 ex-wives, and my two daughters, and my six  
18 grandchildren. I'm sorry and ashamed that I  
19 caused my three brothers and their wives and  
20 their children.

21                  "I can't take back the pain that I've  
22 caused these people. I can't take back the pain  
23 that I caused my deceased mother who loved me and  
24 stood by me until the end of her life. May God  
25 bless her soul. A .. yet I couldn't take the

1           heartache and pain that I caused her away from  
2           her. I couldn't take it away from my mother.

3 Even at the age of 87, I know my father loves me  
4 and yet in his eyes I can see the pain and  
5 sadness and the disappointment that I've caused  
6 him.

1 Today I'm sober and free of drugs and I have been  
2 since January 27th, 1984.

3 "I'm just sorry and ashamed beyond words  
4 that it took this crime and conviction to sober  
5 me up and to get me off drugs so that I could  
6 find myself and see that I really am a decent man  
7 and a decent human being. I didn't you all the  
8 certificates or chronos that I have earned or  
9 received over the years, but I am sending you  
10 what I do have to give you an idea what I've been  
11 doing since I've been incarcerated --"

12 **PRESIDING COMMISSIONER KUBOCHI:** Mr. Bair, I  
13 don't mean to interrupt.

14 **INMATE BAIR:** Yes.

15 **PRESIDING COMMISSIONER KUBOCHI:** But your  
16 statement to us is why you believe you are suitable for  
17 parole. I'd like the record to reflect that you have a  
18 total of about six inches of documents that you brought  
19 into this hearing room.

20 **INMATE BAIR:** Yes.

21 **PRESIDING COMMISSIONER KUBOCHI:** And you have  
22 told us the content of this letter, but that's a single  
23 spaced, handwritten document that was addressed to the  
24 District Attorney.

25 **INMATE BAIR:** Yes.

1                   **PRESIDING COMMISSIONER KUBOCHI:** And we want your  
2 statement as to why you believe you are suitable for  
3 parole today. We understand that you wrote the letter  
4 to the DA. And with that --

5                   **INMATE BAIR:** I wanted to make sure he  
6 understands it. That he --

7                   **PRESIDING COMMISSIONER KUBOCHI:** He's not a  
8 participant here, sir.

9                   **INMATE BAIR:** Okay. Thank you. You want to know  
10 why I deserve to be paroled today?

11                  **PRESIDING COMMISSIONER KUBOCHI:** That's correct.  
12 That's what your statement is about.

13                  **INMATE BAIR:** Why I deserved to be paroled today  
14 is because I know why Mrs. Aikens died and I know why  
15 the trauma Mrs. Fomasi went through. It's about  
16 attitude. It's about self-esteem. It's about personal  
17 pride of which I had none.

18                  This crime started when I was two and a half or  
19 three years old. It started at the age when I first  
20 realized my father was beating my mother with his fists.  
21 When she was knocked to the ground, he would kick her in  
22 the face and kick her in the stomach until he got tired  
23 of my crying and screaming at him to stop. To this very  
24 day, I can still see my mother's bloody face at my  
25 bedroom window crying saying, "Clif .. let me in. Don't

1 tell Daddy I'm home." I'd open the window for her and  
2 she'd crawl into my urine soaked bed. I would open the  
3 window and she would crawl in. Needless to say my  
4 parents were drunks and this nightmare went on at least  
5 twice a month until I was abandoned at the age of 14  
6 years old.

7 We didn't have any plumbing in our home until  
8 approximately 1958 or '59, so there was no where I could  
9 bathe in order to get rid of the urine smell. I carried  
10 it to school with me. Needless to say, I didn't have  
11 any friends or self-esteem. I felt extremely inferior  
12 and with the attitude I had, I hated myself. My father  
13 and two of his friends stole a truckload of wine when I  
14 was 10 or 11 year old. My father stored his share of  
15 the wine in our attic of our house. And that's when I  
16 started drinking. When I was caught stealing my  
17 father's wine, he would beat me.

18 I remember being beaten so bad a couple of times  
19 that my mother refused to let me go to school. I'll  
20 never forget the day that my father came home and he was  
21 drunk as usual. I was 14 years old. We were living in  
22 a trailer house in Capay, California, Yolo County. He  
23 says, "We're moving to Los Angeles. Is there anybody  
24 going with me?" And I looked at him and I said I'm not  
25 going. I'm 14 years old and I'm not going.

1       When I got into high school, I was able to shower  
2 in gym class so I didn't smell so bad. Once I was on my  
3 own, I stopped wetting the bed. As happy was I was to  
4 be on my own, the next three years of living, 90 percent  
5 of the time I had no lights, no hot water. I would work  
6 after school at White's General Store.

7       During some months in the barley harvest I would  
8 (indiscernible) for Bill Richards. I can remember lots  
9 of times during those three years that I was on my own  
10 being so hungry that I just cried.

11       After I finished high school, 10 days after my  
12 18th birthday, I joined the Navy. I continued drinking  
13 alcohol through my four years in the Navy. Once out of  
14 the service, I started taking speed in pill form. Once  
15 I added speed to the alcohol, I was out of control.

16       What does any of this have to do with the death  
17 of Mrs. Aikens and the trouble Mrs. Fomasi went through?  
18 It has to do with my mental illness. My mental illness  
19 being that I would not stop drinking or using drugs when  
20 I knew it was destroying my life and everybody's life I  
21 came into contact with. I never grew out of the  
22 terrible attitude that was forced upon me as a child.  
23 Even though I graduated from high school, I was  
24 uneducated.

25       took the California Highway Patrol examination

1 four times. I couldn't pass it. I took the deputy  
2 sheriff's examination twice in San Bernardino and  
3 Riverside. I couldn't pass it. My first marriage ended  
4 because I wouldn't stop drinking and doing drugs. My  
5 second marriage ended for the same reason. I loved  
6 Linda and I wanted our marriage to work. She asked me  
7 to sober up and get off drugs, and I said no. I asked  
8 her to stop having affairs and she said she would, but  
9 she didn't. I blamed her for the demise of our marriage  
10 and yet I wouldn't stop drinking or doing drugs long  
11 enough to give our lives together a chance. This went  
12 on for 10 years.

13 Mrs. Aikens death and the trauma of Mrs. Fomasi  
14 is a sad and horrible result of a childhood filled with  
15 physical and emotional abuse also an adulthood of being  
16 out of control on alcohol and drugs. Yes, I'm extremely  
17 sad and sorry and ashamed that I caused the death of  
18 Mrs. Aikens and for the trauma I put Mrs. Fomasi  
19 through. Like I said, if I could turn back the clock,  
20 my God, I would. But you just can't do it. All I can  
21 do is what I've been doing for the last 23 years,  
22 staying sober, staying off of drugs, paying attention to  
23 my AA program, doing my self-help work, loving my wife,  
24 and doing the very best I possibly can. Like in the  
25 four agreements, tell the truth, do the best we . n,

1 don't take it personal, and don't make assumptions.

2           With the help of AA and NA and my wife and  
3 family, I'm going to stay sober and free of drugs until  
4 the day I die.

5           I'd like to go over my parole plans again if you  
6 don't mind from Sacramento and Placer County. Today I'm  
7 not an unreasonable risk to the public safety nor am I  
8 threat to society. Why is this true? It's true because  
9 I'm sober and free of drugs and alcohol and I have been  
10 since January 27th, 1984. It's true because, and this  
11 is sad, because of the horrible crime that I committed,  
12 I was given a chance in this life to find the man and  
13 human being I was born to be.

14           I was given the chance to get off of drugs and  
15 alcohol and find that I had a choice of being the man  
16 and human being that I wanted to be. I found that the  
17 hell that I suffered as a child and the hell I put  
18 myself through as an adult did not define who I am  
19 today. I have found that my self-worth is not found in  
20 drugs or alcohol. Today my self-worth is found in the  
21 man and human being that I am today.

22           It's true today because I am a proud husband, a  
23 proud grandfather, my work reports through the past 23  
24 years have proved that I take pride in my work. I take  
25 pride in the support of my family & friends. I take

1 pride in the fact that my wife and I are ready for our  
2 freedom. I take pride in the fact that I have the  
3 courage to tell the Aryan Brotherhood in 1984 and 1985  
4 when they threatened my life that I wouldn't get metal  
5 for them to make weapons with. I said no. I said my  
6 life had been threatened dozens of times over the years  
7 simply because I wouldn't cave in to do what other  
8 people wanted me to do for them that was illegal and  
9 that would end up getting other people hurt.

10 My proof you find me suitable for parole is in my  
11 parole plans. My parole plans for Sacramento County and  
12 Placerville, I will parole wherever the Parole Board  
13 tells me to, of course. But I also have parole plans  
14 for Roseville and Placer County. I have the home with  
15 my wife in Roseville at 345 Shadow Ridge, Number Four.  
16 Our phone number is (916) 773-5296. I have  
17 transportation to and from work. I have a firm job  
18 offer from my brother Gerald Bair driving truck. I have  
19 a firm job offer from Mr. Mike Ogness at his driving  
20 school. I have an offer to help me find employment from  
21 my brother Lloyd Bair. I have a job offer from the  
22 City of West Sacramento. I have a job offer from  
23 Woodmart of Rancho Cordova. I have a list of five  
24 welding companies who have said they will interview me  
25 for a job. I'm in touch with the Department of

1 Corrections Employment Services Division who will assist  
2 me in finding employment.

3 I have had my wife call the Labors Local which is  
4 185 out of Sacramento and the Teamsters Union, which is  
5 Local 228 out of Sacramento, and they have assured her  
6 that I can be reinstated in the Teamsters and Labors  
7 Union. I will also check in with the state unemployment  
8 office. I have contacted the Veterans of California in  
9 Sacramento through Jeff Peters and they will help me. I  
10 have written to Sacramento County to the stripping  
11 company here in Sacramento. I have a letter from Mr.  
12 David H. Craig of Inmate Employability Program, who has  
13 given me a letter of recommendation for use in finding  
14 employment.

15 I have the resource guide for Placer and  
16 Sacramento Counties that have the addresses of alcohol  
17 and drug treatments, the AA offices, AA meeting places,  
18 NA meeting places. I have emergency assistance  
19 addresses. I have the transportation addresses. I have  
20 Veterans Administration addresses. I have the  
21 Sacramento and Placer County sober living addresses if I  
22 need it. I have parole plans for Sacramento and Placer  
23 County. I wrote to the New Choice program of Sacramento  
24 who has turned me down with any help because of my  
25 cri... but I've written to them anyway.

1 I have a letter from the Department of  
2 Corrections and Parole Community Services of which  
3 offers programs that include employment assistance,  
4 learning centers, and residential facilities. Substance  
5 abuse and treatment programs. I have the information  
6 from Charles A. Jones Skills and Business Center of  
7 which I have filled out the forms to be ready and turn  
8 in. I have information about employers being bonded by  
9 the federal government to give ex-convicts employment.  
10 I have permission for them, if they need it. I have --

11 **PRESIDING COMMISSIONER KUBOCHI:** Sir, I hate to  
12 interrupt.

13 **INMATE BAIR:** Yes.

14 **PRESIDING COMMISSIONER KUBOCHI:** But I'd like the  
15 record to reflect that your statements are all being  
16 read into the record from something you've prepared.  
17 They appear to be going on and on, and we have your  
18 parole plans, sir.

19 **INMATE BAIR:** Yes, okay. Thank you.

20 **PRESIDING COMMISSIONER KUBOCHI:** Okay.

21 **INMATE BAIR:** That will be all for me. Thanks.

22 **PRESIDING COMMISSIONER KUBOCHI:** Okay. Thank  
23 you. Before we go into recess, I'd like the record to  
24 reflect that there's four letters from Michael Ogness,  
25 O-G-E-N-E-S-S [sic]. And one of the letters includes

1 signature of his wife Martha. There's a Janet LeClaire,  
2 Woodmart Products, job. Joe Rosenthal, Ph.D., letter  
3 and support. Mr. Rosenthal is in charge of  
4 institutional clinical services here. Barbara Usrey,  
5 U-S-R-E-Y, employment, West Sacramento. Donna Butler,  
6 employment, Sacramento County, common spelling. Bud  
7 Inzer, I-N-Z-E-R, Veterans Training and Jobs. There's a  
8 letter from your cellmate. There's a letter from D. A  
9 Schaffer, S-C-H-A-F-F-E-R, who appears to be another,  
10 there's an H number. It looks like a CDC number, but  
11 he's a letter in support. Paul Hyde, Inmate Peer  
12 Tutoring, H-Y-D-E. Initials J. M. Meyer, M-E-Y-E-R,  
13 friend. Shelly Ellis, common spelling, daughter. Doug  
14 and Brett McKoon, M-C, capital K-O-O-N, stepsons. Ralph  
15 Stevens, inmate, now on parole, letter of support.  
16 Valerie Bair, two letters from your wife. Lloyd Bair,  
17 letter of support, brother. Your sister, I believe it's  
18 sister in law Ana Bair, A-N-A, that's her first name?

19           **INMATE BAIR:** That's Diane

20           **PRESIDING COMMISSIONER KUBOCHI:** Diane. I  
21 couldn't read her writing. I knew you would clarify it  
22 if I just let you know it was your daughter-in-law.  
23 Duke Bair, brother. Dan Britton, B-R-I-T-T-O-N, Veteran  
24 Services Officer. R. C. Dunn, father-in-law. Ezra,  
25 E-Z-R-A, goes by the name of...ll Bair, your father.

1 Butch Barker, Senior Work Force. Bud Inzer, again, two  
2 letters from him from the Veterans Group. Kyle Terzian,  
3 T-E-R-Z-I-A-N, drug abuse. Royal Stewart, common  
4 spelling, AARP. There's a letter from Suzanne AARP. S.  
5 Singleton, common spelling AARP. And those are in  
6 regard to jobs for people over 55. T. O'Sullivan,  
7 friend, inmate. And a letter documenting parole  
8 programs available for those in release in the  
9 community. It's 9:05. We're going to be in recess for  
10 deliberations, sir. Thank you very much.

11 **INMATE BAIR:** Thank you very much.

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## 1 CALIFORNIA BOARD OF PAROLE HEARINGS

## 2 D E C I S I O N

3 DEPUTY COMMISSIONER LUSHBOOUGH: We're on record.

4 PRESIDING COMMISSIONER KUBOCHI: All right, the  
5 time is 11:28, and we're back on the record for Clifford  
6 Bair, C-95079, and his Subsequent Parole Consideration  
7 Hearing.8 Sir, this Panel has reviewed all information  
9 received from the public and relied upon the following  
10 circumstances in concluding that you are not suitable  
11 for parole and would pose an unreasonable risk of danger  
12 to society or a threat to public safety if released from  
13 prison. And looking at the crime, we find that the  
14 offense was carried out in an especially cruel or  
15 callous manner. There were multiple victims in this  
16 case. In this, especially in the case of Ms. Aiken.  
17 She was 84 years old and we find that she was  
18 particularly vulnerable. The second victim, Ms. Fomasi,  
19 was also particularly vulnerable in that she dropped --  
20 she happened to drop by at the victim's residence when  
21 you had taken control of Ms. Aiken.22 And although we don't know whether you had bound  
23 Ms. Aiken, that Ms. Fomasi in accidentally dropping by  
24 to drop off the mail for Ms. Aiken was confronted by you

1 and also bound. We find that the surprise on her and  
2 the age and circumstances of your initial contact and  
3 assault upon Ms. Aiken indicates a particular cruelty  
4 and disregard for the safety of others and a disregard  
5 for the human suffering. In fact, Mrs. Aiken died of  
6 heart failure while bound by you. We find that these  
7 are particularly aggravated and we also find that the  
8 victims were psychologically abused by you in that you  
9 clearly had an opportunity to cease. You, throughout  
10 the record of your conviction, you went to Bodega Bay  
11 from Visalia, which is quite a distance away, because of  
12 your, I'm going to call it your obsession with what your  
13 wife was doing in clearly a failing relationship.

14 We also make a finding that your social history  
15 before this crime was very unstable in that you had had  
16 many failed marriages and few stable relationships with  
17 others. There is a little bit of an irony in that the  
18 very people that you wish to seek support from, such as  
19 your father and your immediate family members, were  
20 there in your life at the time and seemed to have had no  
21 influence on your behavior. You basically, as  
22 demonstrated by your statements at this hearing, did  
23 what you wanted to do. And what you did ultimately was  
24 in the total disregard for the rights of others.

25 CLIFFORD BAIR C-95079 DECISION PAGE 2

3/30/07

1                   You stole other people's cars. You burned them.  
2 All in your attempt to get up to Bodega Bay. You were  
3 left without transportation in Visalia. You checked  
4 into the hotel under a different name and when asked why  
5 you did that, you simply said that you did this every  
6 time out and what appeared to this Panel as just a  
7 cavalier fashion. It creates a lot of concerns because  
8 your answers were given to us today.

9                   The facts of the crime and all the aggravated  
10 factors surrounding the crime are what you call static.  
11 They're in the past and will never change. But in  
12 talking about the offense and some of your motivations  
13 and thinking at the time, we're asking what you were  
14 thinking today about these factors and your responses  
15 and your body language are a source of concern.

16                   On the one hand, when people talk about -- and  
17 before I go into this, we also find that your motivation  
18 for this crime was just really inexplicable. What  
19 started out in your journey from Visalia, the object of  
20 your concern and your passion was your wife and your  
21 fears that she was involved in an extramarital affair.  
22 And we had some exploration as to why, what I would call  
23 metaphorically the target of your concerns as you left  
24 Visalia switched over to Ms. Aiken, and frankly you

1 didn't have a real good explanation. It appears that  
2 whoever crossed your path was going to be in for a  
3 problem physically. From their physical safety purposes  
4 and the rage and your inability to control your emotions  
5 made you a danger to anybody who happened to have met  
6 you if you at the time perceived that they crossed  
7 either some line that you have, some line of behavior,  
8 whatever. But there was no reason when you left Visalia  
9 for you to target Ms. Aiken as the object of anything,  
10 whether it's death, physical harm, or whatever.

11 And clearly as I've indicated earlier, when Ms.  
12 Fomasi came over there, she didn't have to be bound up  
13 either. You had plenty of time to cease your conduct.  
14 And the fact that you didn't and your continued on and  
15 you continued to be involved with the violations of the  
16 rights of others is a big concern to us. And as of  
17 today, the dynamic factors, your answers in regard to  
18 why you continued to do what you did remain a real  
19 concern to us.

20 And so as I was about to say that people can come  
21 in here and say that they're a changed man or a changed  
22 person. Well, you've been locked up for a while and  
23 it's only natural that there's a passage of time and all  
24 of us change. But we're not satisfied with your

1 insights as to the underlying causes and sources of your  
2 involvement. The alcohol and drugs can be viewed as a  
3 contributing factor, but they weren't the sole reasons  
4 of why you did the acts against Ms. Aiken and Ms.  
5 Fomasi. And your explanations as to what you did  
6 separate and apart from your alcohol and drug  
7 consumption are not reasonable.

8 And that leads me to make a finding that you're  
9 -- we find that your abstention or your abstaining from  
10 alcohol and drug consumption while incarcerated in a  
11 controlled setting is really only part of the issue of  
12 who you are. We also find that although you remain  
13 discipline free and you do real work here in prison,  
14 it's in a controlled structure. It's in a controlled  
15 environment. And perhaps that's the best place for you.  
16 And that's all part of why we're finding you not  
17 suitable for parole. You operate better in a controlled  
18 environment where other people are in control of what  
19 you have to be doing and what you're responsible for  
20 doing.

21 Before this crime was committed, you had a record  
22 that involved carrying a sawed-off shotgun that was  
23 loaded. On this case here, you brought a shotgun with  
24 you from Visalia to Bodega Bay. You stole a pickup

1 truck. You drove it up. Clearly, you did not have an  
2 innocent intent. Shotguns involving human behavior and  
3 not related to fishing or hunting can only have one  
4 deadly ending.

5 Another disturbing factor is that in 1982, you  
6 drove your vehicle into the store that was owned by your  
7 in-laws. And under the circumstances and the totality,  
8 that's a crime of violence. You didn't like what you  
9 perceived their interference into your relationship with  
10 Linda Bair and you drove your car into their store  
11 causing, by 1982 dollars, 3500 dollars in damage as you  
12 backed it right up into the doorway. That was in  
13 disregard for others. There could have been a customer  
14 there just standing behind the door. That's why I call  
15 it a crime of violence.

16 So the homicide that was committed isn't your  
17 only acts that indicates a disregard for the safety of  
18 others or issues about your behavior and your mindset  
19 that are a cause of concern for this Panel. We've heard  
20 from the opposition of the Sonoma County District  
21 Attorney's office, and we also make a finding that, a  
22 separate finding that you have been convicted of a very  
23 aggravated murder involving multiple victims and it is  
24 not reasonable that -- and that it is not reasonable to

1 expect that parole would be granted at a hearing during  
2 the next three years, sir. You still have issues to  
3 work on.

4 In this case there were multiple victims attacked  
5 who were particularly vulnerable. You had an  
6 opportunity to cease. And it appears from the stealing  
7 of the car to the burning of that pickup that everything  
8 you did on that trip was premeditated and deliberated  
9 and planned and calculated. You checked into a motel in  
10 Bodega Bay under a false name. We find that both  
11 victims in this case were psychologically abused and  
12 were exposed to extreme harm caused by you. In fact,  
13 the one victim had a heart attack while bound up by you.  
14 And we also find that your motive to harm Mrs. Aiken and  
15 Ms. Fomasi was just totally unacceptable.

16 We believe that you continue to need therapy to  
17 face, understand, and cope with stress in a  
18 nondestructive manner as well as to come to terms with  
19 other issues. In looking at your life, sir, most of  
20 your problems you have in addition to your alcohol and  
21 drugs involve women as a target of all your negative  
22 emotion and ideations. Although you've never physically  
23 abused women within the meaning of 273.5, that is in  
24 regard to the person you were living with, your

1 descriptions of your relationships with your other wives  
2 indicate that there was many, many arguments. That all  
3 of your relationships with women involve arguing and  
4 ultimately deteriorated in the form of a divorce.

5 And to that extent, sir, you continue to need  
6 more therapy and more insight and more work in regard to  
7 establishing that you're not a threat to anybody else.  
8 Perhaps to all males, they won't be harmed by you. But,  
9 like I said, in looking at everything in your personal  
10 life, whether it's record for convictions or just your  
11 personal history, you have problems with women. You're  
12 married now, but we find that your contact with your  
13 current wife, Valerie, that you met while you were  
14 incarcerated is not a source of stability as the most  
15 recent psychologist says because you never had a  
16 relationship with her as husband and wife outside this  
17 facility. So it's in error to say that, yeah, that  
18 marriage is a source of stability to you. And through  
19 that relationship, you've proven that you've worked out  
20 a lot of your issues with women.

21 And with that, Commissioner, do you have any  
22 further comments?

23 DEPUTY COMMISSIONER LUSHBOOUGH: No. No comments.  
24 Thank you.

1 PRESIDING COMMISSIONER KUBOCHI: Thank you. It is  
2 now 11:42, and this hearing is concluded, sir.

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21 PAROLE DENIED THREE YEARS

JUN 28 2007

22 THIS DECISION WILL BE FINAL ON: \_\_\_\_\_

23 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT

24 DATE, THE DECISION IS MODIFIED.

25 CLIFFORD BAIR C-95079 DECISION PAGE

3/30/07

**CERTIFICATE AND  
DECLARATION OF TRANSCRIBER**

I, SANDRA TILLMAN, as the Official Transcriber,  
hereby certify that the attached proceedings:

In the matter of the Life	)	CDC Number: C-95079
Term Parole Consideration	)	
Hearing of:	)	
	)	
CLIFFORD BAIR	)	
	)	

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DEUEL VOCATIONAL INSTITUTION

TRACY, CALIFORNIA

MARCH 30, 2007

8:47 A.M.

were held as herein appears. Further, this transcript  
is a true, complete, and accurate record, to the best of  
my ability, of the recorded material provided for  
transcription.

  
\_\_\_\_\_  
Sandra Tillman  
May 14, 2007  
Capitol Electronic Reporting

✓ 03

## **EXHIBIT BB**

## 1 CALIFORNIA BOARD OF PRISON TERMS

## 2 D E C I S I O N

3 PRESIDING COMMISSIONER MOORE: All right,  
4 let the record show that all interested parties  
5 have returned to the room, Clifford Bair, CDC  
6 number C as in Charlie 95079. The Panel has  
7 reviewed all information received from the public  
8 and relied on the following circumstances in  
9 concluding that the prisoner is not suitable for  
10 parole and would pose an unreasonable risk of  
11 danger to society or a threat to public safety if  
12 released from prison at this time. The paramount  
13 reason would be the timing and the gravity of the  
14 committing offense. Mr. Bair, the offense was  
15 carried out in an especially callous manner.  
16 There were multiple victims attacked, injured, or  
17 killed in the same incident in that Theresa Blanch  
18 Aikens, she was 86 years of age, lost her life in  
19 this incident, as well as Rosie Formosie was  
20 accosted and tied up. And you had a loaded  
21 weapon, by the grace of God, more people weren't  
22 hurt. You were going after your wife, you had  
23 some marital discord. You followed her. You  
24 stole a pickup truck and yet today, when we  
25 questioned you about, why, you really couldn't  
26 answer why other than you just lost it and -- The  
27 CLIFFORD BAIR C-95079 DECISION PAGE 1 7/25/03

1 offense itself was carried out in a manner which  
2 demonstrates, let's see, an especially insensitive  
3 disregard for human sufferings. This 86-year-old  
4 woman, she deserved to live out the rest of he  
5 life in peace. She was a well-respected member of  
6 the community -- of her community, loved by all,  
7 and the motive for this crime was inexplicable and  
8 very trivial in relationship to the offense  
9 because of marital discord and distrust. These  
10 conclusions are drawn from the Statement of Facts  
11 wherein the prisoner embarked on -- the prisoner  
12 embarked on a crime spree of sorts and all because  
13 of marital disputes with his wife or spouse  
14 intending to follow the -- his wife, spy on her.  
15 You accosted Theresa Aikens, bound her, took her  
16 glasses. Another innocent bystander came to  
17 deliver mail and you forced her on the floor and  
18 bound her. And then you not only left there, went  
19 off, took her vehicle from there, then you got  
20 into a boat, took a boat. Nevertheless, these  
21 conclusions are drawn from the Statement of Facts  
22 where the victim -- one of the victims lost her  
23 life. She was left bound and gagged under some  
24 bedding and a mattress. She died as a result of  
25 your actions. Previous record, the prisoner has  
26 an escalating pattern of criminal conduct, a  
27 CLIFFORD BAIR C-95079 DECISION PAGE 2 7/25/03

1 history of unstable tumultuous relationships with  
2 others, coming from a dysfunctional family.  
3 setting, an abusive father. The prisoner also has  
4 a problem with marriages, he's been in five  
5 different marriages. He's failed to profit from  
6 society's previous attempts to correct his  
7 criminality, such attempts included probation,  
8 county jail time, fines, restitution for fines.  
9 The prisoner has an unstable social history or  
10 prior criminality which includes as I mentioned  
11 earlier about the use and abuse of substances,  
12 illegal substances such as alcohol and drugs and  
13 possession of a -- arrest for possession of a  
14 sawed-off shotgun. Institutional behavior, the  
15 prisoner has programmed in a limited manner while  
16 incarcerated. He's not sufficiently participated  
17 in beneficial self-help and therapy programming at  
18 this time. Parole plans, the prisoner lacks  
19 realistic parole plans in the last county of legal  
20 residence or the county of commitment, he does not  
21 have acceptable employment plans at this time.  
22 3042 Notices indicate opposition to a finding of  
23 suitability, specifically -- oh, in terms of  
24 plans, I mean to mention as well, he does have  
25 some alternate plans in an alternate county.  
26 However, the county of commitment or the county of  
27 CLIFFORD BAIR C-95079 DECISION PAGE 3 7/25/03

1 last residency, he has none. 3042 Notices, the  
2 Hearing Panel notes responses to 3042 Notices  
3 indicate an opposition to a finding of  
4 suitability, specifically the District Attorney's  
5 Office of Sonoma County were representative here  
6 and present and they're in opposition to a finding  
7 suitability here today. Other information bearing  
8 on his suitability would be that the prisoner's  
9 counselor, a CC-I D.W. Nelson wrote in the current  
10 Board report of the prisoner that he would pose a  
11 moderate degree of threat if released to the  
12 public at this time, today. Remarks, the Panel  
13 makes the following findings: That the prisoner  
14 still needs therapy in order to face, discuss,  
15 understand, and cope with stress in a  
16 nondestructive manner so that he can better  
17 understand the causative factors of why he did  
18 what he did, why he chased his wife half way  
19 across the state, stealing a vehicle, stealing  
20 several vehicles, and a vessel, and then  
21 accosting, causing the disruption of life for one  
22 of our senior citizens. And until progress is  
23 made, the prisoner continues to be unpredictable  
24 and a threat to others. The prisoner's gains are  
25 recent, and he must demonstrate the ability to  
26 maintain these gains over an extended period of  
27 CLIFFORD BAIR 15079 DECISION PAGE 4 7/25/03

71

1 time. Nevertheless, he should be commended for  
2 positive work reports, he's been a continuous --  
3 positive reports in the PIA metal fab, got a  
4 forklift operator's license, participated in 2002  
5 in the Conflict Resolution, as well as Phases Life  
6 Skills in 2002 as well. However, these positive  
7 aspects of his behavior don't outweigh the factors  
8 of unsuitability at this time. This is another  
9 three-year denial, Mr. Bair, and in a separate  
10 decision, the Hearing Panel finds that the  
11 prisoner has been convicted of murder and it is  
12 not reasonable to expect that parole would be  
13 granted at a hearing during the next three years.  
14 The specific reasons for our findings are as  
15 follows: That the prisoner committed the offense  
16 in an especially callous manner. As I mentioned,  
17 there were multiple victims attacked, injured, or  
18 killed in the same incident, and the offense was  
19 carried out in a dispassionate manner. This was  
20 the murder of Theresa Aikens; she was 86 years of  
21 age. She did not deserve to lose her life in such  
22 a fashion. The prisoner was embarked upon a crime  
23 spree after some type of marital discord or  
24 dispute with his spouse with the intent to spy or  
25 to -- on his wife. He stole a vehicle or truck,  
26 traveled some four and a half-hours or more trying

1 to track her down, ascertain her location which  
2 never took place by the grace of God.  
3 Unfortunately, Ms. Aikens ran into his path and  
4 Ms. Formosie as well ran into the prisoner's path  
5 and unfortunately Ms. Aikens lost her life. She  
6 was found bound and gagged under some bedding and  
7 mattress and subsequently died as a result of the  
8 prisoner's actions. This was -- the motive was --  
9 the crime was inexplicable or very trivial in  
10 relationship to the offense as mentioned, a  
11 marital discord. The prisoner has a history of  
12 criminality and misconduct and we talked about  
13 that in regards to problems with substance abuse,  
14 of alcohol, drugs, amphetamines were used,  
15 possession of a sawed-off shotgun. As well, the  
16 prisoner has a history of unstable, tumultuous  
17 relationships with others coming from a  
18 dysfunctional family setting, an abusive father,  
19 having multiple marriages and multiple divorces.  
20 Therefore, a longer period of observation or  
21 evaluation of the prisoner is called for before  
22 the Board should find that he is suitable for  
23 parole. Recommendations to you, Mr. Bair, are to  
24 continue to remain disciplinary free, to continue  
25 to participate in beneficial self-help and therapy  
26 programming to better help you to understand the  
27 CLIFFORD BAIR C-95079 DECISION PAGE 6 25/03

1 causative factors of what caused you to be before  
2 us here today, what caused Ms. Aikens to lose her  
3 life. This will conclude the reading of our  
4 decision today. Commissioner, any comments to the  
5 prisoner?

6 DEPUTY COMMISSIONER HARMON: Nothing further  
7 at this time. Continue on the same path you're on  
8 sir. Good luck to you.

9 INMATE BAIR: Thank you.

10 PRESIDING COMMISSIONER MOORE: Good luck to  
11 you, Mr. Bair.

12 INMATE BAIR: Thank you.

13 PRESIDING COMMISSIONER MOORE: That will  
14 conclude the hearing, the time is 1015 -- yes,  
15 that's his -- 1015 hours.

16 ATTORNEY CHLADEK: Can he have that file now  
17 or --

18 DEPUTY COMMISSIONER HARMON: This needs to  
19 come out.

20 ATTORNEY CHLADEK: Okay.

21 DEPUTY COMMISSIONER HARMON: Just take it  
22 out.

23 PRESIDING COMMISSIONER MOORE: Just take the  
24 Acco fastener off and he can have that.

25 PAROLE DENIED THREE YEARS

26 FINAL DATE OF DECISION \_\_\_\_\_

(07 23 08)

27 CLIFFORD BAIR C-95079 DECISION PAGE 7 7/25/03

2000

**EXHIBIT CC**

## 1 CALIFORNIA BOARD OF PRISON TERMS

## 2 D E C I S I O N

3 PRESIDING COMMISSIONER MUNOZ: The hearing for  
4 Inmate Bair has resumed. And, Mr. Bair, this Panel  
5 has reviewed all information received from the public  
6 and relied on the following circumstances in  
7 concluding that you're not suitable for parole, and  
8 that you would pose an unreasonable risk of danger to  
9 society and a threat to public safety if released from  
10 prison at this time. Many factors were considered.  
11 First and foremost was the commitment offenses and  
12 their nature. The offenses were carried out in an  
13 especially cruel manner, a manner that demonstrates a  
14 callous disregard for human suffering. Multiple  
15 victims were confronted and one was killed, Ms. Aiken  
16 was killed, and the other suffered -- I don't know if  
17 she suffered any physical injury, but I'm sure she  
18 suffered emotional type injuries, after they were both  
19 left behind bound and gagged, and Ms. Aiken was under  
20 some mattrasses. Also, the motive for the crime was  
21 inexplicable or very trivial in relation to the  
22 offense. I suppose I'm speculating when I say that  
23 your intention was merely to take the vehicle to  
24 follow your spouse. I'm not sure. But at any rate,  
25 you probably could have done that without causing any  
26 harm to either the victim who died or the other person

1 that you left tied up. After all, the victim was 86  
2 years old and she was -- you took her glasses. She  
3 couldn't see. I'm not sure. I can't think of any  
4 good reason why she was left tied up and under the  
5 bedding and the mattress. These conclusions are drawn  
6 from the Statement of Facts, wherein the prisoner  
7 embarked on a crime spree after some kind of a marital  
8 dispute with his spouse and intended to spy on the  
9 victim (sic). I suppose, as I just stated, he  
10 intended to take the victim's car. He left her bound  
11 and gagged under some bedding, a mattress, and she  
12 died as a result of those actions by the prisoner.  
13 This inmate has failed to profit from society's  
14 previous attempts to correct his criminality. Such  
15 attempts include adult probation, county jail time, as  
16 well as fines and restitution that he was ordered to  
17 pay by the courts as a result of previous arrests.  
18 And he also has an unstable social history and prior  
19 criminality, which includes the use and abuse of  
20 substances, such as alcohol and amphetamines.  
21 Regarding your institutional behavior, you have  
22 received 12 (sic) 128's and two (sic) 115's. The 115  
23 was for smoking, smoking at the work cite. I will  
24 note that one of the 128's was also for the same type  
25 of violation. The inmate's parole plans include  
26 strong support from his family and some job offers.

1 but this Panel feels that that job offer or those job  
2 offers need to be firmed up and that you should --  
3 this Panel also wants you to explore the continuing  
4 with the AA type programming, as I talked about  
5 earlier in this hearing. This Panel makes the  
6 following findings: That the prisoner needs to  
7 continue in self-help programming and therapy, in  
8 order to face, discuss, understand, and cope with  
9 stress in a nondestructive manner, until progress is  
10 made, and the prisoner continues to be unpredictable  
11 and a threat to others. This Panel appreciates the  
12 inmate's gains and they are somewhat recent, but we  
13 want you to demonstrate an ability to maintain those  
14 gains over an extended period of time. And he should  
15 be commended for some of the things he has  
16 accomplished. You have taken part in a number of  
17 self-help programming, including the Sitta program,  
18 which is a yoga type of a self-help program, and  
19 you've also taken part in a number of other programs  
20 here in the institution. They include substance  
21 abuse, the Alternatives to Violence, the anger  
22 management program. They're all very important  
23 programs and this Panel appreciates you doing that.  
24 You should also be commended for completing the  
25 plumbing vocational program and for your current work  
26 in welding. And this Panel also acknowledges that you  
27 CLIFFORD BAIR C-95079 DECISION PAGE 3 4/12/00

1 are now presently involved with the AA program here at  
2 the institution. However, these positive aspects of  
3 your behavior do not outweigh the factors of  
4 unsuitability. In a separate decision, this Hearing  
5 Panel finds that the prisoner has been convicted of  
6 murder and it is not reasonable to expect that parole  
7 would be granted at a hearing during the next three  
8 years. The specific reasons for this finding are as  
9 follows: The prisoner committed the offense in an  
10 especially cruel manner. After being -- while  
11 involved in a marital dispute with his spouse, he  
12 broke into a residence, supposedly to steal a car. He  
13 tied up the victim, an elderly victim, 86 years old,  
14 tied her up, gagged her, left her under some bedding  
15 and a mattress, and also did that to a second woman  
16 that came to the residence, left her tied up. Left in  
17 a stolen car. Ms. Aiken died as a result of the  
18 actions undertaken by the inmate. And this -- in this  
19 crime spree that the inmate took part in or  
20 perpetrated, both of the victims were injured. As I  
21 said, one was killed and one was emotionally scarred.  
22 The offenses were carried out in a dispassionate and  
23 calculated manner, and a manner which demonstrates a  
24 callous disregard for human suffering. The motive for  
25 the crime was inexplicable in relation to the offense.  
26 I don't think we'll ever figure out why the inmate

1 just couldn't have taken the car and walked away. He  
2 was dealing with a 86 year old female. And perhaps,  
3 if he had just taken the car, she wouldn't have died  
4 the way she did. Also, I have to note that the  
5 prisoner has a history of criminality, which includes  
6 arrests for -- or drug related arrests, driving under  
7 the influence, and possession of a shotgun, and also  
8 was arrested for malicious mischief. He was found  
9 guilty or pled guilty to all of the charges that he  
10 was arrested for. And he has history of abuse of  
11 alcohol and amphetamines. The recommendations from  
12 this Panel, Mr. Bair, that you become and remain  
13 disciplinary-free, and also if available to continue  
14 your participation in any and all self-help programs  
15 that become available, and also continue with the  
16 welding that you're involved in now.

17 INMATE BAIR: Thank you.

18 PRESIDING COMMISSIONER MUÑOZ: All right, sir.  
19 And I want to wish you good luck in your endeavors.  
20 And, Mr. Smith, do you have anything further for the  
21 inmate?

22 DEPUTY COMMISSIONER SMITH: Good luck, sir.

23 INMATE BAIR: Thank you very much, I appreciate  
24 it.

25 PRESIDING COMMISSIONER MUÑOZ: This concludes  
26 the hearing for Inmate Bair. It's n. 14 minutes to  
27 CLIFFORD BAIR C-95079 DECISION PAGE 5 4/12/00

1 one p.m. Thank you for being here, sir.

2 INMATE BAIR: Thank you, Gentlemen, very much,  
3 I appreciate it.

4 DEPUTY COMMISSIONER SMITH: You got it, thank  
5 you.

6 PRESIDING COMMISSIONER MUÑOZ: Thank you.

7 INMATE BAIR: Thanks.

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25 PAROLE DENIED THREE YEARS

26 EFFECTIVE DATE OF THIS DECISION MAY 02 2000

27 CLIFFORD BAIR C-95079 DECISION PAGE 6 4/12/00

## **EXHIBIT DD**

## IN RE LAWRENCE

Cite as 59 Cal.Rptr.3d 537 (Cal.App. 2 Dist. 2007)

561

As revealed earlier, as it had three times earlier, the Board found Lawrence's record exhibited all the positive factors listed in the regulations as favoring release on parole, except for the one applicable only to battered spouses. As to the commitment offense itself, the Board found it had been committed while under the stress of an emotional love triangle. It also found none of the other negative factors were present. Lawrence had no criminal record whatsoever, to say nothing of a history of violent crimes or assaultive behavior. Nor was there any suggestion of sadistic sexual acts or an unstable social history. Psychological examinations for the last 15 years uniformly report Lawrence to be sound psychologically and with no severe mental problems. Finally, Lawrence's performance during more than two decades of incarceration has been exemplary, to say nothing of being free of "serious misconduct."

[6] Despite the Board's action and its repeated overwhelmingly positive findings—on four occasions spread over more than a decade—the Governor's reversal of its recommendation must be upheld if there is "some evidence" to support his contrary conclusion the parole should be denied. But as explained earlier in discussing the standard of review, it is not just "some evidence" to support the Governor's findings, but "some evidence" sufficient to satisfy the statute's ultimate test, that is, "some evidence" the release of Lawrence would subject society to an "unreasonable risk" of danger to public safety.<sup>64</sup>

[7] As a result, a finding a given murder was committed in an "atrocious" manner, for example, only supports a denial of

64. "The test is not whether some evidence supports the *reasons* the Governor cites for denying parole, but whether some evidence indicates a parolee's release *unreasonably endangers public safety*." (*In re Lee* (2006) 143

parole to an otherwise suitable inmate when the atrociousness of the murder was of such a nature it logically leads to the conclusion release of the inmate *at the present time* would create an "unreasonable risk" of danger to public safety. "The commitment offense can negate suitability only if circumstances of the crime reliably established by evidence in the record *rationally indicate* that the offender will present an unreasonable public safety risk if released from prison."<sup>65</sup>

The fact Lawrence was not a career criminal or a serial or mass murderer or sex offender, nor one who murdered for financial gain, but whose only crime was the murder she committed during a period of emotional stress while still a young woman, combined with the fact she is now entering her sixties, greatly reduces the risk she will be a danger to the public safety if released on parole. But the issue remains whether it can be said there is "some evidence" to support the Governor's contrary conclusion within the state and federal standards of review.

#### B. Cases Interpreting the State "Some Evidence" Standard.

In recent years, several California appellate courts have applied the state constitution's due process "some evidence" standard as declared by the California Supreme Court in *Rosenkrantz* and found a commitment murder insufficient to sustain a denial of parole many years or decades later. Meanwhile, several federal district courts have invoked the federal due process "some evidence" standard set forth in *Biggs v. Terhune* to reverse parole denials, again when based on old commitment offenses. The California Supreme Court ex-

Cal.App.4th 1400, 1408, 49 Cal.Rptr.3d 931, italics added.)

65. *In re Scott* (2005) 133 Cal.App.4th 573, 595, 34 Cal.Rptr.3d 905, italics added.

court rejected this characterization. “[T]he record contains no evidence Scott committed his offense ‘in an especially heinous, atrocious or cruel manner,’ or that the nature of his crime indicates he poses a continuing threat to the public safety if released.... All of the many psychological evaluations of Scott emphasized that he committed his crime while he was experiencing an unusual amount of stress arising from unusual circumstances not likely to recur, and for that reason (as well as his prior crime-free life) there was a low risk he would commit another violent act if released.”<sup>75</sup>

The same could be said about Lawrence based on the record in her case. Indeed there are close parallels between the two cases. Lawrence’s paramour told her he was leaving his wife then called to say he couldn’t do it, because the wife threatened loss of his children. Just like Scott, Lawrence drove over in a rage to confront and eventually kill the person who was keeping her from her lover. Moreover, in both cases, the Governor based his reversal of the parole board’s recommended release on the nature of the commitment crime—characterizing Scott’s as “especially atrocious” and “particularly heinous” while Lawrence’s as “a shockingly vicious use of lethality and an exceptionally callous disregard for human suffering.”

In *In re Lee*,<sup>76</sup> a man had sold his restaurant, but the buyer was behind in his payments. In 1987, the seller brought a gun and box of bullets when he came to the restaurant to collect an overdue payment, purportedly intending to kill the buyer and then himself. When the buyer refused to pay, the seller drew the gun and fired five rounds, wounding the buyer but

killing the buyer’s wife. In 1989, the seller pled guilty to second degree murder and premeditated attempted murder. He was sentenced to 17 years to life for the second degree murder and life with the possibility of parole for the attempted murder. Sixteen years later, in 2005, Lee had his first parole hearing and the Board approved an immediate release, but the Governor reversed the recommendation.<sup>77</sup>

The Court of Appeal reversed the Governor’s reversal, summarizing its reasons in the following words. “We must ... view the Governor’s two reasons within the context of the other factors he must consider to see if some evidence shows Lee continues to pose an unreasonable risk to public safety. [Citation omitted.] Applying that test, we find no evidence that Lee is likely to commit another crime or that his release would unreasonably endanger the public. Like the Governor, we do not minimize the seriousness of Lee’s offenses [now] 19 years ago, for which society has legitimately punished him. No reasonable possibility exists, however, that Lee will re-offend. Other than his offenses here, he has led a crime-free life. The dispute over the restaurant debt that motivated the shootings occurred almost 20 years ago. Weakened by the march of time and by all mortals, Lee is now 82 years old and in poor health, leaving him to hobble from room to room. The two reasons the Governor cites—the nature of Lee’s crimes and recent acceptance of responsibility—do not change those facts. We conclude the Governor’s reversal of the Board’s decision is therefore not supported by some evidence.”<sup>78</sup>

75. *In re Scott*, *supra*, 133 Cal.App.4th at pages 600–601, 34 Cal.Rptr.3d 905.

76. *In re Lee*, *supra*, 143 Cal.App.4th at page 1404, 49 Cal.Rptr.3d 931.

77. *In re Lee*, *supra*, 143 Cal.App.4th at pages 1404–1405, 49 Cal.Rptr.3d 931.

78. *In re Lee*, *supra*, 143 Cal.App.4th at page 1409, 49 Cal.Rptr.3d 931.

eration in the suitability determination is whether the inmate is *currently* a threat to public safety.”<sup>85</sup>

Also decided in late 2006, *In re Elkins*<sup>86</sup> ordered the forthwith release of a prisoner who had been convicted of first degree murder in 1980 receiving a sentence of 25 years to life and whose recommended parole in 2005 had been reversed by the Governor. As is true in Lawrence’s case, the primary grounds for the Governor’s rejection of the Board’s recommendation was the “heinous, atrocious or cruel” nature of the commitment offense.<sup>87</sup>

The victim of Elkins’s crime was a friend to whom Elkins, at the time a 19-year old drug user, owed money for prior drug purchases.<sup>88</sup> Elkins committed the murder in the course of a robbery by beating the sleeping victim repeatedly with a baseball bat. He then stole money and property from the victim’s bedroom, placed the body in a car trunk, drove to an isolated area near Donner Pass and dumped it. He went home and slept for several hours before stealing more of the victim’s property from a storage locker and the house of the victim’s girl friend. Elkins then fled the state and remained on the run for several months before being captured and returned to California for prosecution. He pled not guilty, but was convicted by a jury of first degree murder and robbery. The judge sentenced him to 25 years to life for the first degree murder

and a concurrent sentence on the robbery.<sup>89</sup> Elkins finally revealed the location of the victim’s body some 10 months after the murder.<sup>90</sup> By the time it was found, and the victim’s relatives received some closure, the body was partially eaten by animals.

In contrast to Lawrence, Elkins did not have a discipline-free prison record—although it had been for a long time before the parole hearing.<sup>91</sup> He had two serious violations in the first three years of his commitment, one of which put him in “Max B,” an increased custody level, for seven months. There also were claims by other prisoners caught in drug-dealing to the effect Elkins was a “major dealer” within the prison as recently as 1990, but nothing evidently came of those confidential reports. Like Lawrence, Elkins also had a number of minor incidents, primarily being late to assignments, resulting in counseling.

In other respects, Elkins had a very good record of progress while in prison—but not nearly as outstanding as Lawrence.<sup>92</sup> While Lawrence earned an AA, BA, and an MBA, in a comparable period of time Elkins only received a GED and was working on his AA. But Elkins had, like Lawrence, participated in a wide array of behavior modification programs including several designed to address the serious drug addiction he suffered during the period he committed the robbery-murder that

85. *In re Weider*, *supra*, 145 Cal.App.4th at page 589, 52 Cal.Rptr.3d 147, italics added.

86. *In re Elkins* (2006) 144 Cal.App.4th 475, 479–480, 50 Cal.Rptr.3d 503.

87. *In re Elkins*, *supra*, 144 Cal.App.4th at pages 486, 493, 50 Cal.Rptr.3d 503.

88. *In re Elkins*, *supra*, 144 Cal.App.4th at pages 480–481, 50 Cal.Rptr.3d 503.

89. *In re Elkins*, *supra*, 144 Cal.App.4th at page 479, 50 Cal.Rptr.3d 503.

90. *In re Elkins*, *supra*, 144 Cal.App.4th at page 481, 50 Cal.Rptr.3d 503.

91. *In re Elkins*, *supra*, 144 Cal.App.4th at pages 483, 484 and footnote 2, 493, footnote 5, 50 Cal.Rptr.3d 503.

92. *In re Elkins*, *supra*, 144 Cal.App.4th at pages 483–484, 493, footnote 5, 50 Cal.Rptr.3d 503.

district court decisions discussed below,<sup>100</sup> and concluded “[t]he facts of the offense here are older than in any of those ... cases and less or only equally aggravating.... The Governor's decision reversing the Board's grant of parole on the basis of the facts of the offense lacks 'some evidence' that granting parole posed 'an unreasonable risk of danger to society.'”<sup>101</sup>

The Court of Appeal in the *Elkins* case took the unusual step of issuing its writ forthwith, ordering the prisoner's immediate release.<sup>102</sup> The California Supreme Court then not only denied review, but also denied supersedeas and a depublication request.<sup>103</sup> If the result and rationale in *Elkins* are correct, *a fortiori*, the Governor's reversal of Lawrence's parole release cannot be sustained. Beating a man to death in order to take his property and savings, then hiding the body and fleeing the state is certainly more indicative of a predisposition to reoffend than is a shooting and stabbing during a fit of rage over the loss of a lover. To the extent fleeing the jurisdiction rather than seeking to evade prosecution and conviction in other ways is a negative, continuing to flee until captured as *Elkins* did is far worse than eventually returning to California and voluntarily turning oneself in to the authorities, as Lawrence did. Furthermore, as to positive factors cited as favoring release, Lawrence is more than a decade older than *Elkins* and has a discipline-free record in contrast to *Elkins*'s serious misbe-

page 500, 50 Cal.Rptr.3d 503.

100. See pages 46–48, below.

101. *In re Elkins*, *supra*, 144 Cal.App.4th at page 502, 50 Cal.Rptr.3d 503.

102. “The Governor's decision reversing the Board decision granting *Elkins* parole is vacated. *Elkins*'s petition for habeas corpus is granted. The Board is ordered to release *Elkins* forthwith pursuant to the conditions

havior during the early years of his imprisonment.”

As mentioned earlier, the dissent rejects the “some evidence” test applied in the above cases—that the commitment offense must supply “some evidence” supporting a finding the prisoner's release at the present time would represent an “unreasonable risk” of danger to the public safety. Instead, the dissent argues, “some evidence” of one of the factors listed in the regulations as militating against release suffices to justify a Governor's reversal of a recommended release on parole. But as discussed further below, assuming as we do these other appellate courts employed the correct test, the nature of the commitment offenses and other circumstances in those cases provide strong precedent for concluding Lawrence's commitment offense fails to satisfy the California “some evidence” test and thus the Governor's reversal should be reversed.

### C. Cases Interpreting the Federal “Some Evidence” Standard.

We turn now to the federal cases interpreting the federal “some evidence” standard framed in *Biggs v. Terhune*, and find they focus more directly on the age of rather than the nature of the commitment offense.

Our suspicion there *may* be a difference between the state Constitution's “some evidence” standard and the federal Constitution's “some evidence” standard finds its

set forth in its decision of March 4, 2005. Considering that release by the Board would have been final on June 30, 2005, over a year ago, and in the interests of justice, this opinion shall be final as to this court immediately.” (*In re Elkins*, *supra*, 144 Cal.App.4th at p. 503, 50 Cal.Rptr.3d 503.)

103. *In re Elkins*, *supra*, 144 Cal.App.4th 475, 50 Cal.Rptr.3d 503, review denied and depublication request denied February 7, 2007.

twenty years-to-life into life imprisonment without the possibility of parole.”<sup>110</sup> The judge then used that rationale to question the Governor’s reversal of a parole recommendation in this case.

“This case presents a stronger case for release than *Biggs* for several reasons. First, petitioner’s commitment offense was less serious than the petitioner’s in *Biggs*. The *Biggs* petitioner was involved in a violent, manipulative, and premeditated murder, while petitioner here acted impulsively and, at least in part, in response to the circumstances. [Citation.] Second, the *Biggs* petitioner had not yet served the full terms of his sentence, while petitioner here has exceeded his sentence by approximately six years. Finally, unlike petitioner here, the petitioner in *Biggs* had not been granted parole by the original panel hearing his case. Petitioner here has ‘demonstrate[d] exemplary behavior and evidence of rehabilitation,’ as required by the *Biggs* court, for a significant period of time. Therefore, the sole reliance on petitioner’s commitment offense in denying him parole impinges on petitioner’s constitutional liberty interest in parole.”<sup>111</sup>

**D. Because of the Nature and Age of Lawrence’s Commitment Offense, It Does Not Supply “Some Evidence” She is a Present Threat to Public Safety.**

We first focus on the report’s discussion of factors other than the commitment offense, in which the report principally questions factors the Board cited as favoring release. Then we turn to the nature of

110. *Martin v. Marshall*, *supra*, 431 F.Supp.2d at page 1046.

111. *Martin v. Marshall*, *supra*, 431 F.Supp.2d at page 1047.

112. At the 2005 hearing, after discussing the commission of the crime and her flight from prosecution two months later, Lawrence was

Lawrence’s commitment offense and whether it supplies “some evidence” rationally establishing her release would pose an unreasonable risk of danger to public safety. And finally, we consider whether that commitment offense has lost whatever predictive value it might have initially possessed because of intervening time and events.

1. Discussion of factors unrelated to the commitment offense in the Governor’s report do not contribute “some evidence” Lawrence’s release would represent an unreasonable risk to public safety.

[8] Using selected quotes from Lawrence’s 2002 and 2005 board hearings, at one point the report suggests Lawrence was not remorseful but was still justifying her murder of Mrs. Williams. Among these selective quotes from the record are the following. “I always viewed [Mrs. Williams] as the obstacle in my fantasy romance. That she was the one that was keeping me from having what I wanted. So in my mind, it was natural for me to confront her as though she would disappear....” Ms. Lawrence ... [also] said that she saw Mrs. Williams as her ‘problem.’

In context, however, it is apparent Lawrence was only explaining her state of mind at the time of the homicide, not justifying it. To the contrary, these and like statements were made in the course of condemning her own behavior on that occasion and expressing deep remorse for what she had done and why she had done it.<sup>112</sup> Furthermore, the 2005 statement

asked if there was anything else she had to say about the crime itself. She responded: “I would like to let you know, you know, that I’m totally, totally aware of what I did. I take full responsibility for what I did.... And I made that first step back into reality to come and let you know that I do understand that I did something horrible, and I’m willing to suffer the consequences for what I did. And I

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